DISARMAMENT

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Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

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The Chemical Weapons Convention: A Great Achievement in Multilateral Disarmament

Carl-Magnus Hyltenius

At the end of its 1992 session, the Conference on Disarmament agreed to transmit to the United Nations General Assembly the text of a draft Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. This constituted a great success for the multilateral disarmament work in general and for the Conference on Disarmament in particular. The chemical weapons Convention establishes an international norm which prohibits all possession and all use of chemical weapons.

When the Chairman of the Ad Hoc Committee on Chemical Weapons, Ambassador Ritter von Wagner of Germany, introduced the result of the negotiations in the Conference on Disarmament, he emphasized that there was no precedent for this global, comprehensive and verifiable multilateral disarmament agreement, which provides for the elimination of the spectre of chemical warfare for all time. He

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also emphasized that the unique character of this Convention was strengthened by the consistent application of the two principles of overall balance and adaptability to future needs.

Great efforts have been exerted to establish a political and geographical balance in the executive body of the Convention (the Executive Council). The Convention contains a verification system consisting of both routine verification of the chemical industry and the possibility of so-called "challenge inspections" of military and civilian installations. It further contains provisions on assistance and sanctions in case of violations of the Convention as well as provisions on the destruction of chemical weapons and chemical weapons production facilities, including verification arrangements. The Convention further opens the prospect of increased international cooperation and trade in chemicals between the parties.

It is explicitly laid down in the Convention that its articles shall not be subject to reservations. The fundamental weakness which has characterized the 1925 Geneva Protocol —the reservations—will therefore not hamper this new instrument of international law.

The quest for a ban on chemical weapons has a long history. The systematic efforts to outlaw these weapons, or at least their use, go back more than 100 years. The background is the cruelty of chemical arms, coupled with their relatively limited military value. Towards the end of the nineteenth century, several efforts were made to give armed conflicts a somewhat less inhumane character. It was considered that war should at least not lead to unnecessary suffering, suffering which is out of proportion to the possible military gains.

The Brussels Convention of 1874 on the laws and customs of war prohibited, *inter alia*, the employment of poison or poisoned weapons. At the first international peace conference in The Hague, in 1899, an agreement was signed

"to abstain from the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases". This prohibition was later confirmed in the Hague Convention of 1907.

In spite of these international efforts, gas was extensively used in the First World War. The first large-scale attack with chemical weapons took place near Ypres in Belgium on 22 April 1915. Chlorine from 6,000 canisters was dispersed, and 5,000 unprepared and unprotected soldiers were killed. Later, phosgene and arsenicals were used and, in June 1917, mustard gas as well. The use of gas progressively increased during the war, and nearly 100,000 soldiers were killed and some 1.3 million were wounded by chemical weapons.

It should be noted in this context that the Brussels Convention prohibited only the use of certain projectiles, and thus did not cover the type of chemical warfare which took place in the First World War I, in which gas was dispersed and left to drift with the wind.

The use of chemical weapons in the First World War demonstrated the cruelty of these weapons and reinforced popular demands for a ban on chemical warfare. It also, however, demonstrated the military value of such weapons against an unprepared and unprotected adversary.

The problem of chemical and biological warfare was taken up at several disarmament conferences during the inter-war period, and a number of expert studies of the issues involved were carried out under the auspices of the League of Nations. At the Naval Conference in Washington in 1922, a treaty was signed by France, Italy, Japan, the United Kingdom and the United States in which they declared that the prohibition of the use in war of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices was

part of international law. The treaty did not, however, enter into force.

In 1925 an international conference was convened in Geneva on the initiative of the League of Nations to consider the supervision of the arms trade. One result of that conference was the adoption of the famous 1925 Geneva Protocol (Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare). Up to the conclusion of the chemical weapons Convention, the Protocol has been the most important legal instrument in the field of chemical weapons.

The prohibition of use of biological weapons was also included in the Geneva Protocol. For almost half a century thereafter, chemical and biological weapons were considered together in disarmament efforts.

In fact, the Geneva Protocol has, to a large extent, become a ban on the first use of chemical weapons, because of the reservations which many parties made when they ratified it. Those who made reservations usually declared that they considered themselves bound by the provisions of the Protocol with regard only to other parties to it, and that they would not be bound by the Protocol with regard to an adversary whose armed forces, or the armed forces of whose allies, failed to respect it.

The outlawing of only the use (or first use) of chemical weapons has proved to be insufficient to effectively prevent their use. Experience has shown that as long as chemical weapons exist, there is a risk that they will be used. Only an effective convention outlawing chemical weapons altogether, and adhered to by all States, can rid the world of the threat of these abominable weapons.

The Disarmament Conference which took place in Geneva in 1932–1933 discussed proposals for extending the prohibition contained in the Protocol in various ways,

including a total ban on chemical weapons, but the Conference failed to reach agreement on this and other questions.

The first clear violation of the 1925 Geneva Protocol occurred when chemical weapons were used against Ethiopia in 1935–1936. Chemical weapons were also employed against China in the late 1930s.

In the Second World War, however, neither chemical nor biological weapons were used, at least not on a large scale. There were probably several reasons for this. The major Powers had learned from their experiences of the First World War. The fact that they had now acquired expertise and equipment for protection against such weapons meant that the weapons would not have been very effective if employed in the Second World War. Besides, each side had to reckon with the risk of immediate retaliation from the other. It is also likely that the public abhorrence of the use of chemical weapons influenced those Governments which may have contemplated using them. Furthermore, it would be wrong to overlook the existence of the Geneva Protocol, which probably also contributed to the restraint exercised by the countries with chemical-weapon capability during the Second World War.

In the 1940s and 1950s there was a rapid development of nerve gas weapons, which were many times more lethal than the earlier chemical weapons. However, relatively little attention was given to the problem of chemical weapons in the first years after the Second World War, because the advent of nuclear weapons overshadowed everything else.

The United Nations became involved with the question of chemical arms in 1947 in connection with the discussions about the definition of weapons of mass destruction, which came to include "lethal chemical and biological weapons". A resolution containing this definition was adopted by the Security Council in 1948.

Towards the end of the 1950s, several plans for general and complete disarmament were submitted, all of which included the abolition of chemical and biological weapons. This issue was, however, considered secondary to the problem of nuclear arms.

The interest in the problem of chemical and biological warfare revived in the latter part of the 1960s, largely as a result of the war in Viet Nam. There was a heated debate in the United Nations about whether tear gases, other irritants and herbicides were covered by the Geneva Protocol. In this debate, which led to no agreement, many arguments were used which had been advanced already in 1930, when the tear-gas issue was first discussed. This question remained open until the very end of the negotiations on chemical weapons. After arduous efforts it was agreed to include in the preamble of the CW Convention a paragraph according to which the States parties recognize the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare. In article I of the Convention each State party undertakes not to use riot control agents as a method of warfare.

In 1968 a treaty was proposed in the Committee on Disarmament in Geneva prohibiting the production and possession of biological warfare agents, thereby suggesting that biological and chemical warfare agents be dealt with separately in disarmament efforts. Three years later, the Conference of the Committee on Disarmament (CCD) completed its work on the draft Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. In December 1971 the United Nations General Assembly commended the draft Convention for signature and ratification. It entered into force in 1975 and now has some 115 parties.

Since the beginning of the 1970s, the question of chemical weapons has been a separate issue in the multilateral disarmament work in Geneva. An ad hoc working group was set up in the CD in 1980, but it was not until 1984 that it was given a formal negotiating mandate. This mandate did not, however, allow for the final drafting of the Convention until the beginning of 1990, when the last formal obstacle to completing the work was removed.

After 1984, the negotiators worked on a "rolling text", an evolving draft of the Convention, up-dated every year with provisionally agreed new elements (annex I) and material for further work (annex 2), parts of which were considered likely to be incorporated into the final version. These texts were included in the annual reports of the Ad Hoc Committee on Chemical Weapons to the Conference on Disarmament.

In 1989, two major international conferences took place outside the CD, which contributed to intensifying the quest for a total ban on chemical weapons. One was held in Paris, with the participation of high-level representatives of 149 States, and another in Canberra, which assembled representatives of Governments and a large part of the world's chemical industry.

Bilateral negotiations between the United States and the former Soviet Union took place in parallel with the multilateral efforts and provided the latter with useful inputs. For example, the provisions in the chemical weapons Convention on the order of destruction build to a considerable degree on a text which was agreed bilaterally between the two leading chemical weapons possessors.

Other important inputs to the text came from the United Nations expert reports on, and the practical experiences of, the United Nations investigations of alleged use of chemical weapons.

Ambitious efforts have been made to involve the civilian chemical industry in this work. Special meetings have been held in the framework of the negotiations with representatives of the chemical industry, and trial inspections have taken place in a number of countries to test the viability of the verification provisions regarding industry as well as military establishments. Furthermore, the Pugwash Study Group on Chemical Weapons and other non-governmental organizations have made useful contributions to the efforts to outlaw chemical weapons.

Among the most difficult political problems was the question of an immediate and total prohibition of the use of chemical weapons from the date of entry into force of the Convention, that is, including the period of 10–15 years required for the destruction of existing chemical weapons. In 1990 the United States and the Soviet Union submitted a joint proposal according to which existing chemical weapons possessors should be permitted to keep two per cent of their arsenals, thereby maintaining a retaliatory capability, until all "chemical-weapons-capable" States had adhered to the Convention. It was in fact only after President Bush's initiative of 13 May 1991, whereby the United States withdrew the so-called "two-percent proposal", that it became clear that the negotiations had definitely entered into their final phase.

The right of retaliation, which several countries had reserved for themselves under the Geneva Protocol, will no longer be valid once they have adhered to the Convention and the Convention has entered into force.

It has been clear for a long time that a complete ban on chemical weapons must be verifiable. There are stockpiles of chemical warfare agents and chemical weapons production facilities in several countries. (According to reports in the international press, it is believed that some 20 States possess or are trying to acquire an offensive chemical warfare

capability.) Furthermore, the civilian chemical industry in many countries produces toxic substances in large volumes and has production processes which can be converted to produce chemical warfare agents. Therefore relatively intrusive verification is necessary to establish confidence in compliance with a chemical weapons convention.

From the very outset, the verification issue was one of the most difficult in the negotiations. The Soviet Union and its allies for many years refused to accept the necessary international verification on their territories, whereas the United States went very far in demanding intrusive and comprehensive verification. This was evident, for example, in 1984, when George Bush, who was then vice-president, submitted a complete draft convention on chemical weapons to the Conference on Disarmament. The attitude of the Soviet Union changed radically under President Gorbachev. The United States also modified its position in this matter; it was no longer a question of "any time, anywhere, with no right of refusal". It gradually became clear, however, that China and a number of developing countries had difficulties in accepting intrusive verification, while the Western European and some other States worked consistently and determinedly for an effective and relatively intrusive verification regime right up until the conclusion of the negotiations.

The outcome of the many years of negotiations on this matter was a true compromise between the demand for effective verification of compliance with the Convention and the need to maintain legitimate secrecy regarding military and industrial matters unrelated to the ban on chemical weapons.

The question of export control of potentially chemical-weapon-related chemical substances and equipment also constituted a very difficult problem. The participating developing countries requested that all discriminatory control as far as parties to the Convention were concerned should

come to an end, and that the so-called Australia Group should be dissolved once the Convention entered into force. It was, however, evident that the emerging system of verification of compliance with the Convention would have some shortcomings, so the exporting countries were not prepared to make a sweeping general undertaking to abolish all control of exports of potentially chemical-weapon-related products to all parties to the Convention. At the last moment, it was possible to achieve a compromise, which will give parties to the Convention more favourable consideration in this context than non-parties, without promising a general and complete abolition of existing restrictions.

The majority of delegations expected a breakthrough in the negotiations to occur in 1992. This expectation had been stated in resolution 46/35 C, adopted by the United Nations General Assembly on 6 December 1991. It was also reflected in the mandate for the Ad Hoc Committee adopted by the Conference on Disarmament. However, in the first months of 1992 the negotiations made little progress towards the expected breakthrough.

In March, the Foreign Minister of Australia, Senator Gareth Evans, submitted to the CD a complete draft convention based on the "rolling text", with some substantive changes and with a more logical editorial structure. It received a generally positive reaction, but was not formally endorsed. However, it contributed to breathing new life into a situation that was largely characterized by stalemate. The Chairman was then requested to elaborate his own draft on the basis of the "rolling text", the Australian draft, and the results so far achieved in the course of the negotiations in 1992. Such a text was presented in May by Ambassador von Wagner in cooperation with the Chairman of the Working Group on verification in the chemical industry and the Friends of the Chair. It constituted a further step towards the final draft, but several parts were controversial, and in June a group of 12

countries, consisting of 11 members of the Group of 21 neutral and non-aligned States, together with China, proposed a number of amendments ranging over a wide field of issues, notably pertaining to the verification regime.

Against this background, the Chairman decided to change the format of the negotiations. He restructured the work and appointed some fellow ambassadors to conduct the negotiations in the various issue areas during a limited period. This led to some further progress in terms of agreed provisions. It also provided the Chairman with indications of where he might possibly find common ground on outstanding issues. On this basis, he presented a revised version of the earlier working paper, which he requested the delegations to submit to their capitals for approval.

When the negotiations resumed at the beginning of the third and last part of the 1992 session, a number of countries stated that, although they had several difficulties with the draft text, they could nevertheless accept it in the spirit of compromise. In particular they were discontent with the regime for challenge inspections, which they considered had been seriously weakened in the course of the negotiations during 1992. The group of developing countries that had earlier submitted joint proposals for amendments, together with China, had now been enlarged by another two States; this "Group of 14" stated that it could not accept the Chairman's text and proposed a number of amendments. The Russian Federation also indicated that it had problems with the draft. The Group of Western States refrained from proposing amendments, although many among them indicated that they too had serious difficulties with parts of the Chairman's text.

On 19 August, after further intensive negotiations, the Chairman presented the final version of the draft Convention. Many delegations said that they could accept the text, but several made statements in which they indicated the

various problems they had with the draft and requested that their observations be reflected in the report of the Ad Hoc Committee on Chemical Weapons. Other delegations noted for the record that such statements "could not be considered to have any authoritative status at the level of interpretation or otherwise". A number of delegations emphasized the positive importance of the Convention. The political struggle around the Convention thus continued to the very end of the negotiations.

The Convention will enter into force 180 days after the date of the deposit of the 65th instrument of ratification, but in no case earlier than two years after its opening for signature. There are good prospects that the required number of ratifications will be achieved relatively quickly, and that the Convention can enter into force in 1995. There is, however, a risk that linkages will be made between the real or perceived possession of nuclear weapons by certain States and the preparedness on the part of others to renounce the chemical weapons option. Such linkages are likely to complicate the process.

A chemical weapons Convention with universal adherence will strengthen the security of all States. Every effort must therefore be made to ensure that the Convention will have broad and, in due course, even universal, adherence.

The chemical weapons Convention represents a breakthrough in multilateral disarmament efforts. It outlaws completely an entire category of existing weapons of mass destruction, and it provides for a system of multilateral verification that sets a new precedent at the global level.

The chemical weapons Convention is also a great success for the Conference on Disarmament. It is, to a much greater degree than, for instance, the NPT, a product of genuine multilateral negotiations, in which no country or group of countries has been able to dictate the outcome. This

should also have a positive impact on efforts to resolve other security problems of global dimensions through multilateral negotiations.

The Scope and Balance of the Chemical Weapons Convention

Adolf Ritter von Wagner

> "The time has come for a global ban on chemical weapons. After long periods of contentious debate and stagnation, we face a singular opportunity. Let us gasp it so that, one year from now, the First Committee may adopt by consensus the text of the Chemical Weapons Convention."

I have taken the liberty of quoting myself because when I made this statement one year ago—I can admit now—I was not fully convinced that this could really happen. Somehow I felt like asking for a miracle. Today, reporting on the results of this year's work in Geneva, I am confident that the First Committee will endorse the chemical weapons Convention without having to rely on a miracle any more. Due to the extremely hard work of the Conference on Disarmament, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction came to the General Assembly with more than 130 countries ready to co-sponsor the relevant draft

Adolf Ritter von Wagner, who is the Ambassador of Germany to the Conference on Disarmament, served as Chairman of its Ad Hoc Committee on Chemical Weapons during the 1992 session of the CD.

This article is based on the statement made by Ambassador von Wagner, in his role as Ad Hoc Committee Chairman, to the First Committee on 13 October 1992.

resolution endorsing the Convention. (The draft was later adopted without a vote as resolution 47/39.)

The result of the collective effort of the Ad Hoc Committee on Chemical Weapons of the Conference on Disarmament speaks for itself. There is no precedent for this global, comprehensive and verifiable multilateral disarmament agreement. The chemical weapons Convention provides for a cooperative, non-discriminatory legal instrument to eliminate the specter of chemical warfare once and for all.

The unique character of its content is strengthened by the consistent application of two principles: overall balance and adaptability to future needs. Future States parties are offered a balanced legal instrument providing clarity on the fundamental obligations and, at the same time, enough subtlety on matters of implementation so that, with the consent of States parties, the respective provisions may still mature and evolve in the course of future practice.

There are six features of the Convention which may be seen as the key components of its overall balance. They may be looked upon separately, but their real significance flows from their entirety. They represent only parts of one single body of provisions. The Convention has the following main features:

1 The comprehensive scope of general obligations in article I, which, in an absolutely non-discriminatory way, bans all conceivable actions in contravention to the object and purpose of the treaty and stipulates the destruction of chemical weapons and production facilities.

2 The built-in safeguards to deal with situations where the basic obligations have not been respected, in particular articles X (Assistance and protection against chemical Weapons) and XII (Measures to Redress a Situation and to Ensure Compliance, including Sanctions).

3 The very clear and unambiguous provisions on the destruction, including its verification, of chemical weapons and chemical weapons production facilities as elaborated in articles IV and V in conjunction with parts IV and V of the Verification Annex.

4 The extremely delicate and equitable balance which has been established in article VIII in the provisions on the Executive Council, its composition, procedure, decision-making, powers and functions.

5 The general verification package beyond the specific provisions for verification of destruction: it consists of challenge inspections (article IX and part X of the Verification Annex) and routine verification in the chemical industry (article VI and parts VII to IX of the Verification Annex). The political instrument of challenge inspections reconciles the diverging objectives of maximum assurance against non-compliance, protection of the inspected State party's sovereign rights, and the prevention of abuse. Routine verification in industry balances the objectives of reliable confidence-building, simplicity of administration, and non-interference with perfectly legitimate activities in the chemical industry.

6 The evolutionary concept of economic and technological development as contained in article XI and highlighted in the Preamble, in conjunction with the equally evolving confidence-building regime of verification in the chemical industry opens the door to expanded international trade and economic co-operation in the chemical sector.

Having highlighted the key features of the Convention, I should like to describe briefly its various articles.

General Obligations and Definitions (articles I and II)

Article I incorporates the basic undertakings of the Convention, adding up to a total ban on chemical weapons and any activities aiming at or contributing to their use. The

definitions in article II make clear that this ban extends not only to chemical warfare agents as such, but also to the means of delivery and other devices specifically designed for the use of chemical weapons. article I furthermore obliges States parties to destroy all chemical weapons, including abandoned chemical weapons, and to destroy chemical weapons production facilities.

Following compromises and concessions made during the summer of 1991, the basic obligations regarding the ban on chemical weapons and their destruction as contained in the Convention are unreservedly comprehensive and absolutely non-discriminatory.

Article II, which defines all important terms used in the articles of the Convention, is particularly important for the purpose of delineating precisely the scope of the basic obligations as contained in article I.

Declarations (article III)

Under this article, each State party shall submit to the Organization, not later than 30 days after the Convention enters into force for it, declarations in particular with respect to chemical weapons, to old and abandoned chemical weapons, and to chemical weapons production facilities. States parties shall declare, among other things, whether they own or possess any chemical weapons, or whether there are any chemical weapons located in any place under their jurisdiction or control, and they are to specify the precise location and quantity of such weapons, and provide a general plan for their destruction.

Destruction and Verification of Chemical Weapons and Chemical Weapons Production Facilities (articles IV and V)

Articles IV and V, in conjunction with parts IV and V of the Verification Annex, contain detailed and rigorous

provisions governing the destruction of chemical weapons and chemical weapons production facilities, including verification. Complete destruction is to be achieved within ten years. Should a State party, in exceptional cases, for technological, financial, ecological or other reasons not be in a position to do so, the Convention allows for the possibility of extending this timeframe by up to five more years. Furthermore, in exceptional cases of compelling need, article V permits States parties to convert, rather than destroy, chemical weapons production facilities, but only under strict conditions designed to prevent their possible re-conversion. In both instances, rigorous additional verification measures are foreseen to prevent circumvention of the basic obligations.

Routine Verification of Activities not Prohibited under the Convention (article VI)

Article VI, in conjunction with parts VI to IX of the Verification Annex, sets forth a comprehensive and graduated routine regime for international monitoring, through declarations and on-site inspections, of "activities not prohibited under the Convention", in particular in the chemical industry. The basis of the regime are three "schedules" (lists), contained in the Annex on Chemicals, identifying toxic chemicals that either have been used as chemical weapons or are precursors to chemical weapons.

Government and civilian facilities producing small amounts of Schedule 1 chemicals, i.e. chemical warfare agents, for certain approved purposes such as protective or medical research, are subject to the most rigorous verification measures under the provisions of article VI and part VI of the Verification Annex.

Industrial facilities producing chemicals listed in Schedules 2 and 3 are subject to the progressively less rigorous measures elaborated in parts VII and VIII of the Verification Annex. Finally, all other chemical production

facilities deemed relevant to the Convention fall under the limited reporting and conditional verification requirements of part IX of the Verification Annex.

These provisions on verification in the chemical industry, as they emerged after years of negotiations, reconcile various objectives: they are conducive to enhancing confidence and international cooperation, but not excessively ambitious in their verification goals; they can be administered with relative ease; and they are flexible and open to future adjustment in the light of practical experience gained.

Verification in the chemical industry aims at steady and continuous confidence-building, it does not provide for highly political action to answer concrete concerns about possible non-compliance. However, verification in the chemical industry and the challenge inspection regime under article IX are complementary: smooth and efficient implementation of verification measures under article VI will greatly reduce the need for challenge inspections, which remain the ultimate safety net also to answer concrete concerns about possible non-compliance in industry.

National Implementation Measures (article VII)

Article VII sets forth the general undertakings of States parties intended to ensure the national implementation of the Convention. It also outlines the relations between States parties and the Organization to be set up under the Convention.

The Organization (article VIII)

To implement the Convention, an "Organization for the Prohibition of Chemical Weapons" will be established in The Hague. It will comprise: a "Conference of States Parties", composed of all member states, which will be the principal organ of the Organization and will meet on an annual basis; an "Executive Council" where forty-one States parties will be

represented, which will have the day-to-day responsibility for supervising the activities of the Organization; and, headed by a "Director-General", a "Technical Secretariat", whose principal component will be the Inspectorate responsible for carrying out the Convention's verification activities.

Negotiations focused in the last round on the question of the composition of the Executive Council. Very diverging or even contradictory interests had to be harmonized: the need for a relatively small and effective, but at the same time representative, body; the interests of all future States parties to have a fair chance for participation in the work of the Executive Council; political and security interests; the particular interests of future States parties, having large chemical industries, which will be most affected by the implementation of the Convention.

The criteria for membership in the Executive Council, as they are specified in paragraph 23 of article VIII, balance these interests. They ensure that the membership of the Executive Council is broadly representative of the membership of the treaty. Members of each regional group will decide among themselves on the designation of Executive Council members from their region, taking into account the criteria specified in the Convention. The regional groups shall also take into account regional factors in designating these members. By using a balanced approach, regional groups are given some flexibility in designating seats within the groups.

Challenge Inspections (article IX)

Article IX provides for consultative clarification procedures and, in conjunction with part X of the Verification Annex, for short-notice "challenge inspections". A State party may request a challenge inspection of any facility or location in the territory of another State party for the purpose of clarifying and resolving any questions concerning possible

non-compliance. The request will then be "multilateralized" and the inspected State party must permit the Technical Secretariat to conduct the inspection and is obliged to grant the Organization's inspection team access. However, there are a number of measures available to the inspected State party to protect from undue intrusion those activities and installations which it considers unrelated to the inspection request.

The challenge inspection regime constitutes a novelty in the verification of a universally applicable arms control and disarmament treaty. Furthermore, it constitutes a politically sensitive concept which balances carefully the verification interests of a State party and of the international community and the interest of the inspected State party to protect sensitive information not related to the chemical weapons Convention. It also balances national sovereign rights and the rights of the community of States parties as represented by the Executive Council and executed by the Technical Secretariat.

The verification system of the Convention, in particular the unprecedented instrument of challenge inspections, could become a basis of reference for other multilateral disarmament agreements or for the strengthening of existing verification regimes.

Assistance and Protection against Chemical Weapons (article X)

Article X is one of the built-in safeguards of the Convention to protect States parties against the eventuality of the hypothetically continuing risk of being threatened or attacked by chemical weapons. It provides, *inter alia*, for the establishment of a voluntary fund for assistance by the Conference of States parties; for assistance through the Organization in case of the use or threat of use of chemical weapons against a State party; and for immediate emergency assistance directly from other States parties.

Economic and Technological Development (article XI)

Article XI aims at promoting expanded international trade, technological development and economic cooperation in the chemical sector. In this regard, negotiations focussed on the question of export controls among States parties. The solution to the issue was found by adopting a flexible and dynamic approach which encourages the progressive removal of existing restrictions, evolving in parallel with the implementation of verification in the chemical industry, thus taking into account the confidence generated by the Convention.

With regard to the pertinent provisions in article XI, attention is also drawn to the following statement by the Australian representative in the plenary of the Conference on Disarmament on 6 August, 1992:

> "They (members of the 'Australia Group') undertake to review, in light of the implementation of the Convention, the measures that they take to prevent the spread of chemical substances and equipment for purposes contrary to the objectives of the Convention, with the aim of removing such measures for the benefit of States parties to the Convention acting in full compliance with their obligations under the Convention."

Measures to Redress a Situation and to Ensure Compliance, Including Sanctions (article XII)

Article XII is the principal safeguard of the Convention to protect States parties against violations of the basic obligations by other States parties. It provides the means to remedy any situation which contravenes the provisions of the Convention. Under article XII, the Organization may require a State party deemed not to be in full compliance with the

Convention to take remedial action and, in the event it fails to do so, apply a number of penalties including sanctions.

In recognition of the United Nations Security Council's paramount responsibility for matters affecting international peace and security, cases of particular gravity are to be referred to the Security Council for any further, possibly mandatory, action under the United Nations Charter.

Articles XIII to XXIV

The remaining 12 articles of the Convention are concerned with: its relation to other international agreements; settlement of disputes; amendments; duration of the Convention and withdrawal of a State party; status of the annexes; signature; ratification; accession; entry into force; reservations; the depositary; and authentic texts. The Convention, which shall be of unlimited duration, shall enter into force 180 days after the date of the deposit of the sixty-fifth instrument of ratification, but in no case earlier than two years after its opening for signature.

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The chemical weapons Convention was worked out in the Ad Hoc Committee on Chemical Weapons, then adopted by the Conference of Disarmament, and, by consensus decision of the Conference, transmitted to the forty-seventh session of the United Nations General Assembly. I am confident that this Convention will inaugurate a qualitatively new era for multilateral arms control and disarmament. It offers us the singular opportunity to lay the foundation of a new, co-operative concept of international security. The overwhelming support given to resolution 47/39 shows that the international community is willing to grasp this chance and to build on it.

The Outstanding Characteristics of the Convention on the Prohibition of Chemical Weapons

Gérard Errera

After ten years of negotiations, particularly intensive since 1991, the Conference on Disarmament has succeeded in presenting to the international community a major achievement in the field of disarmament with the conclusion, this year, of the Convention on the prohibition of chemical weapons (CWC). The signature of this very important treaty, which is scheduled to take place in Paris in January 1993, will undoubtedly constitute a noteworthy event. Why is this so? In my view, its significance is due to three main factors:

—The CWC will entail substantial progress for international security;

—It is expected to achieve universal adherence thanks to the balance between fundamental requirements that it incorporates;

—Its importance must also be analysed in the light of the situation that would prevail had it not been concluded.

Gérard Errera is Ambassador of France to the Conference on Disarmament.

The Convention will entail substantial progress for international security

The Convention is the first genuine multilateral disarmament instrument banning a whole class of weapons of mass destruction.

The Convention prohibits not only the production, but also the acquisition, stockpiling, transfer, use or military preparation for use of chemical weapons, as well as assistance to anyone in activities prohibited under the Convention.

The prohibition encompasses not only the chemical agents as such, but also their means of delivery and any device designed for the use of chemical weapons.

Any State party possessing chemical weapons on its territory or having abandoned chemical weapons on other States' territories is obliged to destroy such weapons, as well as any production facility.

Thus the ban is really a comprehensive one: it covers all chemical weapons. Moreover, under the Convention, chemicals which are not considered as weapons (herbicides, riot-control agents) may not be used as means of warfare.

The Convention constitutes a powerful deterrent against covert chemical weapons development programmes thanks to an unprecedented verification regime

Apart from its provisions on the verification of the destruction of chemical weapons and inspections of the chemical industry, the CWC contains three major innovative sets of provisions:

—It introduces, for the first time in a worldwide agreement, the concept of challenge inspection;

—Such inspections can be carried out not only in declared facilities, but also in undeclared ones;

—These inspections will be conducted by international inspection teams provided by the future Organization, to be set up under the Convention.

This unprecedented system of verification could well become a point of reference for other multilateral disarmament agreements or for strengthening existing verification regimes.

By establishing a jointly agreed norm and granting the international community the practical means of enforcing it, the CWC constitutes a major step in the collective endeavour to eradicate weapons of mass destruction.

The CWC is expected to achieve universal adherence thanks to the balance between fundamental requirements that it incorporates

Balance between the need for credible verification and the safeguarding of national interests

The CWC reconciles the possibility of inspections anywhere with the need to protect national security interests:

—It grants the Organization, through challenge inspections, the practical means of detecting non-compliance. Therefore the CWC has a real deterrent value *vis-à-vis* possible proliferators. The challenge verification regime allows a bilateral suspicion to trigger a multilateral inspection carried out by the Technical Secretariat and a multinational inspection team dispatched by the Organization.

—At the same time, the Convention contains a set of provisions (on time-frames, managed access to the inspected site, measures against abuse) allowing States parties to protect sensitive facilities or information unrelated to chemical weapons.

The chemical weapons Convention takes into account the need to safeguard economic and commercial interests.

Under the Convention, States parties must declare all their chemical production facilities capable of producing chemical weapons. Various risk levels are defined for each agent and different levels of verification apply to each category. Thus, facilities with a chemical weapons capability are covered in a sufficiently broad manner.

At the same time, the Convention ensures that the world's chemical industry will not be subject to an unnecessarily intrusive or bureaucratic system of inspections.

Balance between industrialized and developing countries

Because of their chemical industry capacities, the industrialized countries will bear most of the weight of verification in industry. However, because of the broad concept of facilities with a chemical weapons capability, all States parties having some chemical industry will, one way or another, be affected by verification.

Similarly, it is natural that those countries accepting the constraints of verification and complying with their obligations benefit from an eventual relaxation of the trade restrictions implemented to combat proliferation. This is why the members of the Australia Group announced their commitment to review their policies in this area with the ultimate objective of lifting trade restrictions in favour of States parties acting in compliance with the Convention. This commitment was duly taken into account in the formulation of article XI. It is equally legitimate for the international community to retain the right of applying trade restrictions in the case of States not party to the Convention.

The composition of the Executive Council established by the Convention has been specifically designed to

ensure equitable distribution between the regions of the world. Developing countries represent the majority of seats. At the same time, in determining the number of seats for each region, due account was taken of the relative importance of the chemical-industry capacities of States parties, because of the constraints of verification imposed on them. Moreover, this industrial criterion was defined in a sufficiently flexible manner so as to allow possible regional internal rearrangements or adjustments that may be necessary in the future.

Balance between States possessing and not possessing chemical weapons

Under the Convention, any State party possessing chemical weapons is obliged to destroy all of them as well as production facilities within 10 years after the entry into force of the Convention. This was the price for universality of the Convention. At the same time, it would have been senseless to disregard the technological or financial difficulties which some States parties could face in destroying their arsenals. The Convention thus provides for the exceptional possibility of modifying or extending the 10-year destruction period for a State party, but under conditions of strengthened verification, which would, in effect, place the State party under the strict control of the international community. This would also apply as regards the exceptional conversion of chemical-weapon production facilities to civil use.

Regarding the chemical weapons abandoned by a State party on the territory of another State, the Convention provides for the general obligation for any State party to destroy the weapons which are on its own territory, but, at the same time, it gives the abandoning State a responsibility in the destruction of its abandoned weapons.

Balance between respect for domestic jurisdiction and the need to broaden collective security measures

States parties have the responsibility of implementing the Convention at the national level, but it is up to the Organization to verify compliance with the obligations undertaken. This applies to the declarations made by States parties as well as to the destruction of weapons and production facilities.

The prerogatives of the inspection team in the verification process are balanced by the right of the inspected State to protect its sensitive facilities or information unrelated to chemical weapons.

States obviously remain free not to become parties to the Convention. But in this case, they will have to face trade restrictions from States parties.

The importance of the Convention must also be analysed in the light of the situation that would prevail had it not been concluded

If the Convention did not exist, this would "give the green light" to proliferators. Such a situation would affect the security of all States, particularly the least developed ones.

The corollary of such a prospect would be the necessary strengthening of unilateral non-proliferation regimes, which would increase obstacles to trade and transfers of technology, thus penalizing those developing countries that abide by their commitments.

The strengthening of unilateral cartels would in turn give proliferators a pretext for concealing their covert programmes to rally the third world in a struggle against the technological protectionism of industrialized countries.

In the end, the absence of the Convention would give more weight to the arguments of those who prefer to apply to

violators unilateral measures rather than using collective action which benefits those States which comply with the common norm.

In sum, the chemical weapons Convention is in the interest of all countries. Contrary to the assertions of some, it does not serve the sole interests of developed countries. Quite the contrary, the developing countries should become the main beneficiaries of the Convention:

—First, experience has shown that, unfortunately, it is in developing countries that chemical weapons have been used in recent times, while industrialized countries consider that such weapons have neither strategic nor deterrent value. In any case, developed countries possess appropriate means of detection and protection, means which are not as readily available to most developing countries.

—Secondly, the Convention strengthens the role of multilateral organizations, which corresponds to the wishes and needs of developing countries.

In conclusion, I should add that the Convention is also an historic achievement of the Conference on Disarmament, which has proved that, when conditions are ripe, it has the competence and the expertise to achieve such politically delicate and technically complex agreements. This bodes well for the important issues on the agenda of the Conference on Disarmament in coming years.

Some Observations on the Chemical Weapons Convention

Serguei B. Batsanov

When I was asked to contribute an article on the chemical weapons Convention (CWC) I faced a difficult question: What should I write about? The history of the negotiations? A description of the Convention? Issues of its future implementation? Since a number of my colleagues who are also contributing to the periodical are, without any doubt, at least as knowledgeable in all these areas as I am, it appeared that just another story of how the Convention has been negotiated and what it consists of might be simply boring to a reader. Therefore I decided to limit myself to some observations, which might not constitute a coherent essay, but which, hopefully, could be helpful in understanding this unprecedented treaty and the lessons which can be drawn from the negotiations.

1. *The revolutionary nature of the Convention.* The CWC, which is the product of two decades of negotiations in the Conference on Disarmament and its predecessors (a record in itself), possesses a number of features that make it an outstanding achievement. For the first time a treaty came about as the result of genuinely multilateral negotiations; previous agreements were basically slightly modified copies of Soviet-American drafts prepared by the two countries for relevant occasions. Nevertheless the input made by the United States and the Soviet Union (subsequently by Russia)

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was very significant, both in conceptual terms and in technical details.

The CWC differs from previous multilateral agreements inasmuch as it not only prohibits a whole category of weapons of mass destruction, but also restricts the industrial base that has a potential for producing chemical weapons. Moreover, it provides for unprecedented verification procedures, the most revolutionary of which are the provisions for challenge inspections covering any locations and facilities in States parties, irrespective of their relevance to chemical weapons.

In other words, the CWC verification system covers without exemption all the territory under the jurisdiction or control of each State party, thus greatly facilitating the development of any future verification system.

Finally, the CWC is the first multilateral disarmament treaty establishing its own verification and implementation agency, the Organization for the Prohibition of Chemical Weapons with its own Preparatory Commission. Of course, one could refer also to the IAEA "servicing" the NPT, but the Vienna agency was not etablished by the Non-proliferation Treaty. The OPCW, whose headquarters shall be in the Hague has a good chance of becoming an international organization of the new type: efficient, flexible, free from the notorious international red-tape which was characteristic of a number of older organizations, born in the cold-war era.

2. *Security dimension of the CWC.* The CWC is designed to ensure the elimination and non-resurrection of chemical weapons throughout the world. At the same time one should ask whether this is an important achievement for international peace and security or is the international community again going to outlaw a weapon which has little or no military significance in any case? I believe that the chemical weapons Convention is an outstanding achieve-

ment. It is true that a number of militarily significant countries including the United States and Russia had taken high-level political decisions to write off chemical weapons as a means of deterrence some time before negotiations were concluded. Had this not been the case, we would not have this Convention at all. For, in fact, its elaboration was among a number of major factors which led to their decisions.

Moreover, the CWC, when it achieves universality, will provide a serious reassurance to all States, including those in regions of tension and those that have very tense relations with each other, that they will not face a chemical weapons threat from anyone. Consequently, they will not have to direct their resources to counter such a threat. But the security consequences of the CWC go further than that. Its system will contribute greatly to establishing a wide-ranging regime of transparancy, openness, non-proliferation and trust in military matters under which further achievements in disarmament, including nuclear disarmament, will become much more feasible.

3. *Is the CWC a perfect treaty?* The answer is: certainly not. As any compromise, especially a multilateral one, the Convention contains provisions that make a number of States unhappy. However, it could hardly be made better from the point of view of balancing various interests. For example, what may be considered by one group of States as inadequate, may be viewed by another as excessive. When the negotiations reached their peak in the summer of 1992 and many expressed their dissatisfaction with one or several provisions, it was theoretically possible to prolong the work. However, the risk was too high that in that case there would have been no Convention at all. At a certain point one had to draw a line.

Besides provisions that touch sensitive nerves in various Governments, the CWC text is vulnerable to criticism

for being not very consistent and logical. In some cases, it describes almost every detail of operation (e.g. with regard to CW storage and production facilities), in some other areas it is not specific enough (e.g. in provisions designed to prevent and enforce non-development of chemical weapons). In my personal view the verification system is too bulky and costly with regard to declared facilities—a feature, which is not properly balanced as compared to the challenge inspection regime, which is much weaker.

Here again, we might have had a more logical and consistent treaty, had we decided to go on with negotiations, but the same risk of having no convention at all prevented this. One should also bear in mind that a number of inconsistencies in the text are due to the fact that negotiations lasted for more than two decades, and many concepts that appeared to be correct or acceptable at the beginning proved to be unsatisfactory at the end. Still their traces remained in the form of previously agreed phrases and paragraphs that delegations hesitated to improve or delete.

Indeed, negotiations started in the cold-war era with the primary focus on Soviet and American chemical weapons. They concluded when the whole problem of chemical weapons had ceased to be exclusively an East-West security issue and had become a multi-dimensional complex of East-West-South security and economic questions, and so the approaches to numerious issues like verification were changed.

4. *Verification.* I dare to re-emphasize the revolutionary nature of the CWCs verification system. Certainly it is not one hundred per cent foolproof. But it has sufficient deterrent capacity plus a mechanism that would not allow any serious suspicion of violation to be dismissed or forgotten.

It was stated above that the Convention's challenge inspections provisions are relatively weak. However I don't

believe they could have been made stronger. One shouldn't forget that the whole idea of challenge inspections, when advanced in 1984, had a significant propagandistic function built into it, given the characteristic response regarding such inspections at that time. Later, when the USSR accepted the concept, its original proponents themselves had to adjust it significantly to respond to the needs of protecting sensitive military and industrial inoformation. Besides, while for Europe (including the USSR) arms control inspections as such had become a routine exercise due to the CSCE and CFE negotiations and practical experience, for most of the world such inspections were seen as completely new and sometimes suspect undertakings. So the fact that most countries have now accepted the inspections in their most intrusive challenge-form is really worth noting.

Historically provisions for verification were developed in the following order: first, verification of chemical weapons stockpiles and production facilities, then verification in the chemical industry and, finally, challenge inspections.

Thus, inspection procedures at chemical weapons-related facilities are very intrusive and detailed; those for the chemical industry were reviewed during the last phase of negotiations and rendered more flexible; challenge inspection procedures were worked out at the last moment and contain in fact a variety of options the choice of which would depend on specific situations. One may conclude that there was a tendency to move from trying to prescribe everything in advance to establishing procedures that would allow a flexible choice of options. And that is, without doubt, a positive development. Moreover, it appears that in the case of the most detailed procedures of verificaion, the Organization for the Prohibition of Chemical Weapons (OPCW) would have to adjust them to specific situations.

Ironically, in spite of the drive for perfection in verification, there is an obvious lacuna in the whole system. The problem is that the system's implementation mechanisms will not be in place immediately after the Convention's entry into force: the Director General will not have been appointed, inspectors will not have been confirmed, the list of inspection equipment will not have been approved, etc. Still, according to the Convention, each State party will have the right to request and obtain a challenge inspection, with no one to carry it out. This is just one of the issues which should be carefully considered in the Preparatory Commission.

As a more general observation for the future, one can ask whether it would not be better in such cases to use an approach often proposed in the past by the United States and some other Western countries. According to this concept, the main obligations under a newly negotiated disarmament treaty would become effective only after the organization established by that treaty was in a position to implement its duties fully.

5. *A new combination of bilateralism and multilateralism.* Despite being the first product of a genuinely multilateral process, the CWC would not have been possible without a significant bilateral effort by the two major chemical weapons possessors—the USSR, whose place at the negotiating table was in 1992 inherited by Russia, and the United States. This contribution was made both at the expert and at the political levels.

In the first case, Soviet/Russian and American negotiations developed a number of very important technical procedures, but they were never submitted officially as joint or even unilateral proposals, because this work was conducted in a multilateral context. At first that was necessary to enable the two super-Powers' experts to agree with each other more speedily. Sweden, with its excellent technical and diplomatic

expertise, often played an important coordinating role in this respect. Later on, when Moscow and Washington were on much better terms, such work was often coordinated by chairmen of respective working groups, who were responsible for the outcome.

This mechanism was especially valuable because it made it possible to take on board positions and concerns of other States. During the concluding phase of negotiations, however, the most important questions were dealt with in a series of consultations involving two or more of the most interested partners, like the United States and France (on challenge inspections), the United States and India (on export controls), etc. in a rather transparent manner. To sum it up, the elaboration of the CWC produced a very flexible mechanism for combining what had previously been viewed as different types of negotiations—a development that could prove very useful for the future.

At a political and security level, bilateral talks between Moscow and Washington were highly conducive to building trust and bringing each Government to the basic political decision in favour of abandoning the concept of chemical deterrence. Such intermediate steps as the 1989 Wyoming Memorandum of Understanding on data exchange and verification experiments, and the 1990 bilateral chemical weapons destruction and non-production Agreement (with all of its shortcomings) without any doubt paved the way for the chemical weapons Convention.

6. *Russia and the CWC.* Russia is the world's largest possessor of chemical weapons. At the early stages of negotiations the USSR played a rather negative role. In the second half of the 80s, its role changed fundamentally and it became one of the major driving forces in the negotiations which culminated in the Soviet/Russian chairmanship at the negotiations during 1991 and 1992. More recently, internal

problems have made Russia again a rather difficult partner. In the final stages of negotiation Russia cited economic difficulties and requested a revision of two previously agreed pillars of the Convention: concerning the time-frame for the destruction of chemical weapons and regarding the requirement for the total destruction of chemical weapon production facilities. At the same time it was not able to provide an open and factual account of its problems in a manner that could convince the other negotiators of the importance of its concerns. Personally, I see a major reason for this as an almost inevitable response under present conditions in Russia which makes it much easier to pursue narrow sectoral and even personal interests in the name of preserving national security than to work to meet the requirements of genuine security and economic stability.

This dynamic was also a factor that influenced the two remaining Russian concerns regarding the CWC. The first is the provision which requires a State party to pay for all multilateral verification activities related to the chemical weapons and chemical weapons production facilities on its territory. The second concerns some specific procedures for conversion of former chemical weapons production facilities requiring the destruction of certain equipment which may not be chemical-weapon specific and could be used in peaceful production, but which, for CWC purposes, fall under the definition of "specialized equipment". These are, in my view, not the best and certainly not the most logical provisions of the Convention, but they cannot be allowed to constitute a reason to stay away from this treaty which as a whole, signifies security and, hence, an economic gain for Russia. At the same time ways can and must be found to considerably ease the problems (and there are real problems) that these provisions create for Russia. Some of them can be developed in the Preparatory Commission. Others can

be developed outside the Convention's mechanism, but not at the expense of its effectiveness.

This would be an important and in a sense crucial task. (Russia still has tens of thousands of tons of chemical-weapon agents to destroy.) However this is not the only task in the area of "fine-tuning" of the Convention's system which has to be dealt with first by the Preparatory Commission and then by the OPCW itself.

But the biggest real difficulty that Russia is facing in connection with the CWC is, of course, the destruction of chemical weapons themselves. The former Soviet government has done little to prepare properly for the implementation of the Convention. The new Russian authorities have moved quickly, but they have to work under extremely difficult political and financial constraints. It appears that substantial external assistance will be required.

7. *Some "unrelated" observations for the future.* The negotiations which led to the CWC and to the establishment in due course of it's new international organization were certainly a significant success. But it is hardly a way that should continue to be followed—going into so much detail with regard to future arms control, disarmament and security agreements. The world cannot afford waiting another 20 plus years in order to have another militarily significant global arms control treaty. The agenda is both wide and urgent. One could envisage a number of agreements without so much detail being worked out in advance but with flexible and imaginative machinery for implementation. This calls both for a review of global negotiating institutions and for a reassessment of approaches to a number of implementation mechanisms.

As the chemical weapons negotiations have shown, the concept according to which only limited negotiating bodies can be effective, is not valid any more. All interested

States should have the right to participate fully in negotiations, which would not, in my view, make those negotiations more difficult. It would mean that the Conference on Disarmament could be opened to all those who display a real interest in its work and in formal participation.

The working methods of the Conference on Disarmament should become more flexible. It should be in a position to establish working bodies when the time is ripe and to allocate time (and money) according to actual needs. Participation in those working bodies (possibly with their own programmes of work that might be independent of the official CD sessions) would not necessarily correspond to the official CD membership. What should remain, however, is the consensus rule.

Another luxury that we would not be able to afford would be a proliferation of international agencies to implement specific disarmament agreements. For the future we will have to think about unification of the implementation mechanisms (with due regard to the specificity of each agreement and its verification requirements). Such rationalization would save resources and be able to be more systematic in analyzing compliance with the respective arms control regimes.

In this context one can also question the rationale of having each year one or two review conferences for this or that multilateral disarmament treaty. They cost a lot, last for two or three weeks (which is not enough time to consider the relevant issues seriously) and are manned usually by the same members of the Geneva family of the world "disarmament mafia". I believe that the task of reviewing the operation of such treaties should be given to a reformed Conference on Disarmament (provided its rules are modified to allow all States parties to one or another treaty to participate on an equal basis in the review process).

The conclusion of the chemical weapons Convention closes a whole era of multilateral arms control. Ahead is a new era which hopefully will be even more challenging, dynamic, interesting and businesslike—and we should get prepared for it.

Concluding Negotiations for the Chemical Weapons Convention: A Flexible Global Agreement Whose Time Has Come

Stephen J. Ledogar

Introduction

The chemical weapons Convention (CWC) concluded this year in Geneva at the Conference on Disarmament (CD) and widely supported in New York in the General Assembly is a unique achievement. It deserves the enthusiastic support of the entire international community, and prompt action by all States to bring it into force.

International concern over global proliferation of chemical weapons, their use in the Iran-Iraq war, and the global proliferation of missiles capable of delivering chemical weapons over long distances has rightly fuelled enthusiasm to conclude the CWC. The urgent need for it was underscored in particular by revelations this past year about details of Iraqi chemical weapons.

The Convention builds significantly on the 1925 Geneva Protocol's ban on the use of chemical weapons. In addition to banning the use of chemical weapons, the

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Convention proscribes their production, stockpiling, and transfer. The CWC obligates States parties to destroy chemical weapons and any chemical weapons production facilities they may possess, as well as chemical weapons they may have abandoned on the territory of another State party.

The very extensive verification regime includes inspections of chemical weapons destruction and of chemical industry activities as well as challenge inspections of suspect activities. For the first time such inspections will be conducted on a global basis by international inspection teams.

The Convention represents the outcome of almost two decades of discussion and negotiation by the international community, a process in which the United States played a leading role.

This article describes the negotiating end-game and identifies key balances struck in the course of the negotiations. It discusses ways in which the chemical weapons Convention will contribute to international peace and security. Finally, it describes the role the chemical weapons Convention can play in United States security policy.

The Multilateral Process

The decision of the Conference on Disarmament to transmit to the United Nations General Assembly the text of the chemical weapons Convention in its final report represents a watershed in the long-running efforts to ban chemical weapons. Its many supporters are now taking steps to achieve universal adherence, and are preparing to implement its provisions.

The original draft of a comprehensive CWC was tabled in 1984 at the Geneva Conference on Disarmament by the United States. Since that time, the United States has actively participated in the negotiations.

The June 1990 bilateral chemical weapons Agreement[1] with the then-Soviet Union was designed to give major momentum to the chemical weapons negotiations. In it the United States and the USSR agreed, among other things, to cease all chemical weapons production and destroy the vast bulk of their chemical weapons stocks.

Soon after conclusion of the war in the Persian Gulf, the United States announced its intention to redouble efforts to stem the spread of chemical weapons. Washington changed key positions that had been widely opposed in Geneva concerning the right to retaliate in kind and retention of a small chemical weapons stock. In essence, the United States concluded that it no longer needed to be able to counter the threat of chemical weapons use with its own chemical weapons, but could rely instead on its overall military capabilities. As a result, we no longer needed to retain a small portion of our stockpile rather than eliminating it entirely. This reversal helped catalyze the process and opened the door to successful conclusion of negotiations.

The President also called in 1991 for negotiators in Geneva to accelerate their work. This, too, gave momentum to the talks. The United States developed an approach intended to encourage all States to strive to conclude a Convention that the vast majority of States would join.

Negotiations in the Conference on Disarmament have been tough, slow and technically complex. Many compromises have been made in an effort to reach consensus among the CD member nations. Some countries have been especially active in finding ways to invigorate the process and propel it forward. Australia, for instance, gave a critical boost to the talks in March 1992 with a new draft of the CWC. This version consolidated and streamlined what had been a heavily footnoted document full of hard-to-track cross-references. By clarifying what had in fact been agreed, the Australian text

eased the task of identifying and zeroing in on key unresolved issues. Although the text itself was not adopted, its introduction provoked "new thinking" and propelled the Conference into end-game negotiations.

The Chairman of the Ad Hoc Committee, Ambassador Adolf von Wagner of Germany, took up the challenge and resolved to focus the Committee's work on the areas in which disagreement persisted. He worked with great energy to generate consensus and—where consensus could not be found—to clarify differences and bring them into the open so they might be dealt with. Unresolved issues included some aspects of challenge inspection, composition of the Executive Council, schedules of chemicals and definitions, export controls and trade restrictions, handling of riot control agents, industry verification, destruction and conversion of chemical weapons and associated production facilities, as well as destruction of old and abandoned chemical weapons.

As the second part of the 1992 session of the Conference on Disarmament began in May, the German delegation issued a new version of the text, which reflected yet another improvement in structure and overall clarity. Chairman von Wagner appointed working groups to focus on the main unresolved issues and set a schedule that put pressure on participants to exhaust the alternatives in seeking solutions. He kept the heat on by stating his intention to find his own solutions if negotiators could not come to a compromise. This prospect gave extra urgency to the discussions and ensured a thorough search for solutions, but did not resolve the hard-core remaining issues.

Continuing his innovative approach, Chairman von Wagner next created new working groups headed by "Friends of the Chair" at the level of ambassador. Advocates of opposing views were appointed to represent those views and seek compromise. In late-night sessions marked in some cases

by acrimonious debate, negotiators again failed to close on solutions to all outstanding issues, but narrowed some differences.

The Chairman then produced a set of his own "visions," intended to be workable solutions that balanced (but did not always reflect exactly) opposing views. Although these "visions" did not contain everyone's preferences, they answered the need for compromise and provided an avenue out of end-game gridlock that otherwise might not have been found.

For the most part, these solutions proved acceptable. A number of countries persisted in efforts to alter treaty provisions at the eleventh hour, just before the August deadline for conclusion of the negotiations. Concern that one or more countries might hold the text "hostage" in final meetings of the Ad Hoc Committee ultimately proved unfounded, but attempts to delay and reopen negotiations were made right up to the final gavel. The negotiators agreed to pass the text forward to the CD for inclusion in its final report.

After overcoming further wrangles over composition of the Executive Council and the financial burdens of verifying destruction and conversion of chemical weapons production plants, the CD decided, by consensus, to include the unchanged text in its final report, which was then forwarded to the United Nations General Assembly.

General Assembly resolution 47/39, that commends the text and calls for early opening for signature, has so far received overwhelming support and was, in fact, adopted without a vote. There is a general expectation that many more than the fifty signatures required to trigger establishment of the Preparatory Commission will be collected at the signing ceremony in Paris in mid-January. It is therefore understood

that the Preparatory Commission will begin its work promptly and that entry into force is likely by early 1995.

A Balanced Agreement

The balance of interests contained in the chemical weapons Convention is the product of tough negotiations. Although the hard-won compromises it contains do not always reflect United States preferences, the United States believes that the overall package is acceptable. Balances were struck in a number of areas, notably protection of sensitive activities versus quick access for inspection; maintenance of export controls on suspect States versus the desire for freer trade in chemicals; obligation to destroy chemical weapons on schedule versus flexibility to deal with economic constraints; and comprehensive versus selective industry verification. Each of these is described below.

Protection versus Quick Access

The chemical weapons Convention is the first multilateral agreement with mandatory intrusive inspections that apply to the continental United States. Some of our concerns, of course, have flowed from our interest in protecting sensitive non-chemical weapons activities. As it now stands, the Convention provides an effective mechanism to investigate possible non-compliance through on-site challenge inspection. A multilateral inspection team's right to access in order to investigate possible non-compliance is clearly established. At the same time, the provisions provide protection for legitimate sensitive activities by means of limits on inspection time-frames, managed access provisions, and disincentives against abuse.

It should be noted that before the Stockholm Final Document was signed in September 1986, participating countries of the Conference on Security and Cooperation in Europe (CSCE) feared that challenge inspections of military

exercises would lead to disclosure of sensitive information and threaten participating States' security. These fears were greatly exaggerated. Although the Treaty on Conventional Armed Forces in Europe (CFE) is just beginning its implementation phase, we should expect that initial anxieties about these inspections too will prove unwarranted.

In the chemical weapons negotiations, concerns about protecting sensitive national security activities were paralleled by worries that commercial proprietary information might be compromised. Some of the most sensitive commercial information has to do with the identity of suppliers, the quantity of goods bought and sold, and the prices paid for those goods. It is clear that with the protections built into the Convention, this type of information is unlikely to be exposed under its inspection requirements.

Export Controls and Trade Restrictions

On the economic side, some countries have expressed concern that their developing economies will be harmed because the Convention does not explicitly require development assistance and does not rule out controls on trade in chemicals. This was one of the most difficult negotiating areas. None the less, these concerns were addressed fully in the Geneva negotiations. Although developing countries wanted to avoid being subject to export controls (maintaining that they needed to maximize trade opportunities for development reasons), others saw a need to continue to be able, on the basis of their own judgement, to impose controls outside the framework of the chemical weapons Convention.

As a result, article XI encourages the development of States parties' chemical industries. Members of the Australia Group, which monitors chemical weapons proliferation and sets guidelines for export controls to be applied to would-be chemical weapons States, have made a commitment to review their chemical-weapons-related controls with a view to

removing them for exports to States parties that are in full compliance with the Convention. States parties will, however, retain their sovereign right to control the export of chemicals and equipment from their territory to promote national security and foreign policy goals.

Obligation to Destroy on Schedule versus Need to Accommodate Resource Constraints

The Convention requires a State party in possession of chemical weapons to destroy them all within ten years after entry into force of the Convention. This requirement received broad and enthusiastic support from the vast majority of CD members. None the less, most negotiating parties recognized that the technological difficulty and financial burden of destruction could make it hard for some countries to meet the obligatory deadlines. In particular, the Russian Federation raised this concern.

For this reason, negotiators agreed to provisions in the Convention that permit States parties, under exceptional circumstances, to request an extension or modification of the ten-year destruction schedule set out in the Convention.

Obligations retain their muscle, however. They can only be altered if States parties to the CWC agree that there is a compelling need. Furthermore, verification provisions can be strengthened and other conditions may be imposed if States parties believe the circumstances warrant. And the costs resulting from extension must be borne by the State benefiting from it.

Industry Verification

One of the most difficult balances to strike was between comprehensive and selective approaches to inspection in the chemical industry. Initially, an approach was negotiated that applies routine inspections to facilities that produce, process, or consume chemicals that could pose the

greatest risk to the objectives of the Convention. Negotiators then focused on whether to inspect, in addition, facilities with a capability to produce chemicals that pose less risk. Should routine inspections be conducted at a large number of "chemical-weapons-capable" facilities or only at those that pose the greatest risk?

Eventually, a balance was struck between the need to keep an eye on a broad array of facilities and the need to ensure that the burden of declarations and inspection implementation does not outweigh the benefits. Additional facilities will be inspected on a less intrusive, less frequent basis and inspections of those facilities posing the least risk will not begin until four years after entry into force of the Convention.

Impact of the CWC on Arms Control and Non-Proliferation Efforts

Two important chemical weapons-related challenges face the world community today. The first is eliminating huge stocks of chemical weapons possessed by the United States and Russia. The second involves reversing the spread of chemical weapons to some countries and preventing other countries from acquiring chemical weapons in the future. It is increasingly important to stem the spread of weapons of mass destruction (and by extension, the prospects for their use in regional conflicts.)

These challenges are currently well recognized. Responses to date have been primarily unilateral, or at best, bilateral, and have been aimed at discrete parts of these problems—efforts that are important in themselves but are not integrated on a global basis.

Existing agreements and policy instruments are diverse. The 1925 Geneva Protocol, for instance, bans the use of chemical weapons while still allowing reservations that preserve the right to retaliate in kind. The 22-member

Australia Group is an informal forum whose members try to harmonize their unilateral controls on chemical exports. The bilateral United States-Soviet, now Russian, Agreement to reduce chemical weapons stockpiles includes stringent verification of destruction, comparable to that under the chemical weapons Convention. The fact that at least 20 countries have acquired or are seeking to acquire chemical weapons highlights the need for a more integrated, multilateral approach to the elimination of chemical weapons stockpiles. The Convention consolidates and extends existing efforts. It establishes a global norm against chemical weapons.

Elimination of existing chemical weapons stockpiles is one of the most pressing jobs ahead under the Convention. The Russian chemical weapons destruction programme will require close attention and outside assistance to ensure that the huge Russian chemical weapons stockpile is destroyed safely and on time. At the same time, other countries that possess or are in the process of acquiring chemical weapons will be under an obligation to furnish declarations if they join the Convention. Destruction and verification measures will need to be instituted in those countries under the terms of the Convention. This area will require additional outside attention and assurance.

International security will be enhanced as well through implementation of the Convention's verification provisions. These provisions provide a way to reduce arsenals in a predictable, stable fashion and will build confidence that the prospect of chemical weapons use will diminish. This is particularly important from the standpoint of regional security concerns.

As this Convention picks up signatories, the world will be watching to see which countries acknowledge possession of chemical weapons and which make commitments to rid themselves of what they have. The world

community already has a good idea of who is in possession of chemical weapons. If a country joins the Convention and fails to disclose its own programmes or cheats, it will be taking a very big risk. The United States and many others will be looking carefully at initial declarations. We all will then assess the information provided and begin raising questions.

Inspections will contribute in a variety of ways: by raising the risks and costs of non-compliance; by building confidence that States parties are in compliance; and by furnishing a basis upon which States parties may act if non-compliance is confirmed. Provisions for consultation and cooperation will allow a State party to put pressure on another State party if its behaviour causes concern, through steps short of a challenge inspection. Concerns about possible acquisition or transfer of chemical weapons may be effectively resolved through these efforts. If not, challenge inspection provides a means to investigate aggressively.

Challenge inspection may not be used often, but in certain cases it will likely be necessary to exercise the right to request inspections. States will have to weigh their interest in protecting sensitive sites against the value of candour and transparency. A blunt refusal of access and cooperation during a challenge inspection would set off political alarm bells, whereas openness will generate confidence. Either way, the right to challenge will serve as a deterrent to non-compliance and a spur to action in the event of refusal or compromising results.

Taken as a whole, the provisions of the chemical weapons Convention establish a basis for multilateral action, up to and including the use of force authorized by the Security Council.

The CWC in United States Policy

The chemical weapons Convention is an important step along a path well established in United States policy. First

and foremost, the Convention establishes a global norm against the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons. This reflects earlier United States commitments to eliminate its entire chemical weapons stockpile, but also the President's non-proliferation initiative of 1991, aimed at bolstering United States efforts to stem the spread of weapons of mass destruction.

The Convention also provides a way to integrate disparate policy instruments available to support these goals. As noted above, efforts to facilitate destruction of Russian stockpiles, to block acquisition of chemical weapons by would-be proliferators, and to reinforce incentives not to acquire chemical weapons are strengthened by being integrated and oriented toward the same globally agreed goals.

United States principles of non-proliferation policy are particularly applicable to the chemical weapons Convention. For instance, the United States 1991 non-proliferation initiative provides the option to use compliance with the chemical weapons Convention as one criterion that will affect decisions to provide assistance or cooperation. It also emphasizes the possibility of multilateral enforcement of sanctions if weapons transfers occur or the use of weapons of mass destruction is confirmed.

The United States is providing technical and modest financial support for implementation of the United States-Russian bilateral destruction Agreement. In addition, since contributions to implementation of the Convention will likely be based on the United Nations assessment formula, we will shoulder a substantial share of those costs.

The United States is contributing actively to multilateral harmonization of export control lists and enforcement in cooperation with members of the Australia Group. As noted above, the Australia Group has issued a public statement

committing its membership to review its controls with a view to lifting controls for parties to the Convention which are in compliance.

In addition, the United States will continue its campaign to press countries to sign, ratify, and implement the Convention. We believe that universality is an important goal.

There are two practical reasons why countries now hesitating might want to join the Convention. In the first place, early supporters will have a say in decision-making meetings on questions of staffing, finance, and organization—questions that must be resolved early in order to get Preparatory Commission activities off to a successful start. In the second place, international momentum will put pressure on those holding out on joining because of the isolation they will suffer. Being left out will be increasingly difficult politically. Already, a clear majority of the United Nations membership has voiced approval. We can expect that others will join the Convention early on. Because we believe it is in their interest as well as in the interest of the world community, the United States will continue to press holdouts to sign and ratify the Convention.

Conclusion

The chemical weapons Convention represents the world's best opportunity to eliminate the threat posed by chemical weapons. The alternative is to continue to take piecemeal steps that have neither the comprehensive scope of the chemical weapons Convention nor its global legitimacy. The Convention extends traditional arms control to a global forum, with opportunities to pursue aggressively possible non-compliance. The Convention also integrates global efforts so as to build confidence that all understand who is in compliance and who is not, and to provide a basis for appropriate political action.

From the standpoint of the United States and most others, the balance struck in the negotiations on key issues is not perfect but the overall result is very acceptable. The negotiating process, while tough, tedious, and at times acrimonious, maximized participants' opportunities to have their views heard. In our view, the Convention will help achieve broadly shared arms control and non-proliferation objectives while also protecting sensitive, unrelated activities and interests from unnecessary scrutiny. This will, at the end of the day, contribute to universal acceptance of the Convention.

The United States is working to establish a comprehensive non-proliferation regime that combines incentives and disincentives aimed at stemming the proliferation of weapons of mass destruction. The chemical weapons Convention will be a key element. Compliance with the Convention is one of the criteria by which the desirability of assistance and cooperation is likely to be judged. Furthermore, non-compliance, such as transfers or confirmed use of chemical weapons, may justify unilateral or multilateral action in response. In this way, the Convention provides a previously non-existent, globally agreed basis upon which to press forward with arms control implementation as well as efforts to stem the future spread of weapons of mass destruction.

Note

1 The text of the Agreement was circulated in 1990 as a Conference on Disarmament document at the request of the United States (CD/1001) and of the USSR (CD/1000). The text was reproduced in *The United Nations Disarmament Yearbook*, volume 15: 1990 (United Nations publication, sales No. E.91.IX.8).

The Australian Contribution to the Conclusion of the Negotiations for a Chemical Weapons Convention

Paul O'Sullivan and Bronte Moules

The report of the 1992 session of the Conference on Disarmament (CD), containing a draft global agreement to eliminate an entire category of weapons of mass destruction—the chemical weapons Convention (CWC)—was adopted in Geneva on 3 September 1992. The Convention, which was transmitted in the report of the Conference to the United Nations General Assembly at its forty-seventh session[1] and which will be signed at a ceremony in Paris in January 1993, will prohibit the development, production, stockpiling and use of chemical weapons, and provide for their destruction. It constitutes a global, comprehensive and verifiable multilateral disarmament agreement, for which there is no precedent.

The process by which this historic conclusion was achieved was a complex and difficult one, due, among other things, to:

—The highly sensitive issues of national security involved in the negotiation of an intrusive verification and

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challenge inspection regime, and the accompanying need to balance the interests of both the inspected States and the international community in ensuring the non-proliferation of chemical weapons;

—The potential conflict between the international trade restrictions required in a convention which aims to prevent the proliferation of chemical weapons, and the legitimate interests of States in developing their chemical industry;

—The complexity of the global chemical industry, which will be directly affected by the CWC, and the need to protect its commercial sensitivities.

Despite the complexity and difficulties inherent in the task, a balanced outcome was achieved through strenuous multilateral efforts. In welcoming the conclusion of the Convention negotiations, the Russian Federation's Disarmament Ambassador Serguei Batsanov, paid tribute to two countries in particular: Germany, under whose chairmanship the negotiations had been concluded, and Australia, "which took a risk to be the first one to get outside a customary framework of the so-called rolling text [the document of the Ad Hoc Committee on Chemical Weapons that details the status of the Committee's negotiations on a Convention] and to propose a comprehensive and more simple and understandable draft of the Convention, thus opening up the road which has led us to our present results".

Australia played an active role throughout the negotiations for the Convention, particularly during the concluding phase. Australia's Minister for Foreign Affairs and Trade, Senator Gareth Evans, contributed significantly to the process, not only through his decision to accord the matter high priority in Australian foreign policy, but also through his personal involvement at various stages, including his chairmanship of the Government-Industry Conference against Chemical Weapons, in 1989, and his efforts to focus political

attention on the negotiations by ensuring, during recent years, that the CWC negotiations were on the agenda during his contacts with foreign ministerial colleagues.

To understand the significance of the Australian contribution to the achievement of the Convention, it is useful to review the history of the negotiations.

Background

Discussion on the possible shape of a CWC had taken place in the CD and its predecessor bodies since the early 1970s, and Australia participated in that process at both the political and technical levels from the time it became a member of the CD, in 1979. Formal negotiations for the conclusion of a CWC began in the CD in February 1984, when a negotiating mandate for the Conference's Ad Hoc Committee on Chemical Weapons was established. Shortly thereafter, in April 1984, a major initial impetus was given to the negotiations with the tabling of a draft convention by then Vice President Bush.

International concern with chemical weapons issues increased in the mid-1980s. The large-scale, well publicized and repeated use of chemical weapons in the war between Iran and Iraq during the 1980s evoked horror and condemnation. (One response to this was the imposition of export controls by a growing number of chemical supplier countries to prevent association with CW programmes. Australia took the lead in efforts to harmonize these national measures by establishing the "Australia Group", to work against the proliferation of chemical weapons in the absence of a chemical weapons Convention.)

A considerable amount of useful technical work was carried out during the early years of the negotiations. In general, however, progress was slow because of East-West confrontation and bilateral suspicions. The reduction in

East-West tensions in the second half of the 1980s led to the conclusion, in 1990, of the bilateral United States-Soviet Agreement on the destruction and non-production of chemical weapons.[2] Under this Agreement, both sides would immediately cease CW production and commence destruction of their CW stockpiles by the end of 1992. Destruction would proceed so that each side would have destroyed 50 per cent of its CW stockpile by the year 2000, and further reduced its stockpile to 5000 agent tons by the year 2002.

It appeared by the late 1980s, however, that despite international arms control efforts, the use and proliferation of chemical weapons was, if anything, increasing. At the Paris Conference in 1989, the international community reaffirmed its commitment to the achievement of the CWC. The threat of use of CW by Iraq in the war in the Persian Gulf in 1991 further heightened awareness of the dangers posed by the unrestricted spread of such weapons, and led to renewed efforts in the negotiations in Geneva to conclude the Convention.

Negotiations were boosted by President Bush's announcement of May 1991 that the United States would destroy its entire chemical-weapon stockpile by the year 2002, and that the United States strongly desired that the CWC be concluded by mid-1992. Similarly the United Nations General Assembly, which for many years had unanimously adopted resolutions calling for the earliest possible conclusion of the Convention, called formally, in a resolution in 1991, for the CD to conclude its work on a draft Convention in 1992.

Australian Contributions

The Australian contribution to the negotiation of the chemical weapons Convention took place within the context of a broader national commitment to arms control and disarmament. The starting-point for Australia's vigorous

disarmament policy is the belief that the field of disarmament and arms control in general should not be the exclusive domain of the super-Powers and other major military Powers, but that all States should be able to take part in the process. It is also Australia's firm belief that the establishment of international peace and security requires the negotiation of measures of arms control and disarmament which are concrete, practical and enduring. Pursuant to its disarmament objectives, the Australian Government has provided substantial material and intellectual resources for disarmament efforts; mobilized technical services to enable Australia to contribute directly to the resolution of the practical problems of arms control; participated actively and constructively in all available international bodies, including the Conference on Disarmament in Geneva; and worked to maximize influence in the arms control and disarmament field through cooperation with other countries interested and influential in such issues.

In this context Australia worked actively and indeed began to gain prominence both at diplomatic and technical levels in the CD's work on the Convention, in particular with the commencement of negotiations in the CD in 1984. In 1986, Australia chaired one of three working groups in the negotiations. In May 1986, Australia contributed significantly to the negotiating process by reporting on a trial inspection of an Australian civilian chemical plant. The trial inspection was the first of its kind, and paved the way for progress on the verification aspects of the Convention.

Regional Concerns

As the negotiations for a Convention progressed, concern increased, from an Australian point of view at least, over the fact that the southeast-Asia-Pacific region was under-represented in the CD in Geneva, and thereby in the CWC negotiations: Indonesia and Myanmar are currently the only CD members from this region, apart from Australia.

Many regional countries had not had the opportunity to follow closely the negotiations for a Convention and, in the absence of familiarity with its provisions, could not therefore be expected to adhere readily to the Convention once it was ready for signature.

For Australia, the involvement of regional countries in efforts to ban chemical weapons in a comprehensive way was of paramount importance. The 1980s brought evidence that an increasing number of countries were developing chemical warfare capabilities. It was feared that other countries, faced with security threats—including possibly some in the Asia-Pacific region—would in turn look increasingly to arming themselves with chemical weapons. Given the fact that these weapons are technologically straightforward and relatively inexpensive to make, there was concern that developing countries in particular could be attracted to the idea of establishing chemical weapons capabilities.

The plausibility of chemical weapons proliferation in developing countries, coupled with the fact that defence against chemical weapons in warm, tropical environments (such as Australia's north) would be particularly difficult and costly, led to a regional focus within Australia's chemical disarmament policy, and to specific efforts to involve regional countries more actively in chemical disarmament discussion and, to the extent possible, in the Geneva negotiating process on a chemical weapons Convention.

Lack of southeast-Asia–Pacific involvement in the CWC negotiations was not, however, an issue of regional concern alone. Australia, along with other CD member States, firmly believed that the success and credibility of the Convention would depend on widespread and early adherence. It was feared that the moral force behind the Convention could be dissipated if its entry into force were prolonged by hesitant or indifferent approaches to signature and ratification,

or if signature were not widespread and representative of all geographical regions. Australia therefore wished to ensure that, within the southeast-Asia–Pacific region at least, Governments would not delay in signing a CWC through unfamiliarity or lack of sympathy with the Geneva negotiating process.

Consequently the Australian Government, in June 1988, launched a Chemical Weapons Regional Initiative (CWRI), with the objectives of:

—Establishing a common view that each country of the region would be safer if it had reliable assurances that no country would have or would acquire chemical weapons;

—Establishing a forum for the provision of information and exchange of views among regional countries on progress in the CWC negotiations;

—Providing assistance to regional countries in their preparation for signature and implementation of a CWC.

The first CWRI seminar was held in Canberra in August 1989, and the second in Brisbane in November 1990. Both seminars effectively increased regional understanding of the CWC negotiating process and the issues involved, and contributed significantly to the development of a regional commitment to the conclusion of a chemical weapons Convention. A third seminar, in Sydney in June 1992, carried the process further forward: the 21 participating States confirmed that their respective Governments were giving favourable consideration to the United Nations General Assembly's call to all States to commit themselves to becoming original States parties to the CWC. In preparation for signing the Convention, and as a confidence-building exercise in the region, participants recommended that their Governments exchange statements containing the initial declarations which will be required under the CWC.

In conjunction with these seminars, a technical workshop, conducted in Melbourne in 1991, laid a solid foundation of reassurance among regional States that the verification activities envisaged under the Convention were practical and did not seek to interfere with the normal commercial operation of industry.

Australia will continue to assist regional countries in developing knowledge and understanding of the CWC, and in developing the appropriate legislative and administrative measures required under the Convention. The efforts and energy devoted by Australia to regional involvement in the CWC have clearly yielded positive results, as indicated by the number of regional States which became original co-sponsors of resolution 47/39, on the Convention, adopted by the General Assembly at its forty-seventh session. Significant representation among the original signatories to the CWC can reasonably be expected.

Chemical Industry Involvement

Cognizant of the impact of a future CWC on the global chemical industry, Australian and other officials became convinced during the early phase of the negotiations that an effective Convention would be achieved only with the support and assistance of the international chemical industry in both the design and implementation of the Convention. With this in mind, Australia agreed to organize a government-industry meeting with the aim of bringing together Governments and chemical industries from a wide range of countries, to raise awareness of the problems of chemical weapons proliferation, and to consider ways in which Governments and industry could work together to achieve an effective, global CW ban.

Accordingly, in September 1989, Australia hosted the Government-Industry Conference against Chemical Weapons (GICCW) in Canberra, attended by senior governmental

officials from many countries and chemical industry representatives from 95 per cent of the world's significant chemical industry. GICCW laid the ground work for continued government-industry dialogue on CWC issues, at both national and international levels, and mobilized widespread support for the view that a workable CWC was within the reach of the international community.

Concluding the CWC

As noted earlier, a renewed sense of urgency to conclude a chemical weapons Convention had developed in the Geneva negotiations and in the broader international community by late 1991. Nevertheless, progress in negotiations continued at a pace slower than that which Australia and others would have preferred. This became increasingly frustrating for those who believed not only that the international commitment to the early conclusion of a CWC existed, but that conclusion was, in fact, within reach.

In order to test the validity of this claim, Australian officials began an exercise, intended originally for their own interest only, of producing a model CWC text. The aim of the exercise was to identify balanced compromise solutions to the many unresolved areas of the negotiations, and thereby to develop an indicative model demonstrating the sorts of compromises all negotiating parties would need to make in order to conclude the Convention.

On the basis of the work undertaken in developing the model text, the Australian analysis was that final agreement on a CWC could indeed be close at hand; in short, the exercise demonstrated, in Australia's view, that the General Assembly's call in 1991 for the conclusion of the CWC in 1992 was realistic and attainable.

Australian officials then visited many CD capitals to discuss the model text with relevant capital-based officials.

On the basis of these discussions, Senator Evans concluded that there was value in taking the process further.

On 19 March 1992, Senator Evans presented the Australian model CWC to the Conference on Disarmament. The Minister stressed that Australia had not sought to establish an alternative or parallel negotiating process to the Geneva forum; the Australian model text was not a substitute for the rolling text. Rather, the Australian text represented an accelerated refinement of the rolling text, and demonstrated the means by which an instrument of self-protection could be delivered rapidly to the international community.

The Australian Government was particularly concerned that the international community not miss the window of opportunity available to it: East-West *rapprochment* had assisted in reducing the number of issues which would be "Convention-stoppers" for the negotiations. However, if the CD were unable to finalize an agreement in 1992, Australia believed it was doubtful that the political momentum required to clinch an agreement could be maintained indefinitely. It was possible that if no agreement were concluded in 1992, a CWC of the type then envisaged might never be achieved.

In this spirit the negotiations entered into a final, intensive phase. Conviction among many CD members grew stronger that compromises and agreement on a final text were possible. Nevertheless a series of controversial, complex issues remained to be resolved. Indeed, reconciliation of marked differences on crucial national positions continued to prove elusive until virtually the last moment of the negotiations.

The Chairman of the Ad Hoc Committee, Ambassador von Wagner of Germany, used the Australian model text as a basis for producing a Chairman's text, which, as the Australian text had done, attempted to create an accelerated refinement of the rolling text. This text was used as the basis for a period of intensive negotiations, during which time

special working groups were set up to tackle specific outstanding issues. In order to ensure that discussion in these groups would proceed in the most constructive way possible, and to avoid having deliberations follow exhausted patterns of reiterating known positions in familiar contexts, special coordinators and moderators, with no previous role of direct leadership in respect of each issue, were appointed for each group. Where negotiation of issues had reached a stalemate, it was felt that fresh "management" could lead to breakthroughs. Australia's Ambassador for Disarmament, Paul O'Sullivan, moderated three such groups, and Ron Morris of the Australian Delegation chaired the Working Group on Verification in the Chemical Industry.

At the end of this process, the coordinators and moderators of each group produced papers which, in their view, and on the basis of the negotiations just conducted, represented balanced compromise positions for each outstanding cluster of issues. On this basis, and under the mandate of the Ad Hoc Committee, the first multilaterally based draft treaty was established in the form of a revised Chairman's text. Following a further three weeks of intensive negotiations, during which time specific proposals in relation to the revised Chairman's text were considered in detail, delegations were asked to furnish the Chairman with those amendments which they felt could command consensus in the Ad Hoc Committee.

In parallel with this intensive negotiating phase in Geneva, extensive representations in capitals were made by Australia and other like-minded countries in order to galvanize support for a final compromise draft Convention.

It had become clear by this stage that a CWC would never be 100 per-cent satisfactory to all countries, nor indeed to any individual country. Increasingly, however, negotiating parties as well as officials in capitals accepted

this as the price to pay for a Convention which would increase the security of all, and they therefore exercised the flexibility required to make the final compromises necessary for the Convention's conclusion.

Having thereby exhausted all negotiating possibilities, the Ad Hoc Committee's Chairman subsequently consolidated all amendments which it was believed could command consensus and produced a second revision of the draft Convention. It was essentially this text which was incorporated into the report of the Conference on Disarmament that was adopted on 3 September.

The successful conclusion of the CWC negotiations was historic in that it marked the establishment of a global treaty which will provide for the elimination of an entire category of weapons of mass destruction and for an unprecedented verification regime. It is, in effect, the first universal, verifiable disarmament treaty.

The outcome of the CWC negotiating process indicates clearly the important role which the Conference on Disarmament can play in the post–cold war international environment. By virtue of producing an agreement which will be a practical instrument of inter-State cooperation and enhanced security, the Conference on Disarmament has not only contributed to the institutionalization of multilateral cooperation, but has also demonstrated that flexible and creative approaches, combined with considerable perseverance, can lead to the realization of ambitious, complex arms control and disarmament goals.

Notes

1 *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 27* (A/47/27).

2 The text of the Agreement was circulated in 1990 as a Conference on Disarmament document at the request of the United States (CD/1001) and of the USSR (CD/1000). The text is reproduced in *The United Nations Disarmament Yearbook*, volume 15: 1990 (United Nations publication, sales No. E.91.IX.

The Impact of the Chemical Weapons Convention on Disarmament from a Middle-East Perspective

Mounir Zahran

Introduction

At its 1992 session, the Conference on Disarmament completed negotiations on the draft Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and on 3 September it agreed by consensus to transmit the draft Convention, which it had adopted, to the United Nations General Assembly at its forty-seventh session.

In spite of loopholes existing in the draft text, a draft resolution was submitted to the General Assembly by which the Assembly commended the Convention and requested the Secretary-General to open it for signature. The next step will be the convening of a Ministerial Conference in Paris in January 1993, upon the invitation of President François Mitterrand, at which the opening for signature will take place. The Convention is the outcome of more than twenty years of

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multilateral negotiations in the Conference on Disarmament (CD) in Geneva. These negotiations involved directly 39 States members of the CD, together with approximately 40 States which are not members. From the Arab region, only three States members of the CD, namely Algeria, Egypt and Morocco, participated in the negotiations. Some other countries from the Middle East, including Israel and the Syrian Arab Republic, attended the formal sessions of the CD and the meetings of the Ad Hoc Committee on Chemical Weapons, but did not take part in the decision-making of the Conference.

In dealing with the chemical weapons Convention from a Middle-East perspective, I will first evaluate the draft Convention *per se* from the technical viewpoint, and then examine its implications for the Middle East. The Convention will be considered together with other international instruments governing other weapons of mass destruction,[1] as the focus will be on efforts to provide for confidence-building and disarmament in the Middle East.

Technical Evaluation of the Convention

The Egyptian delegation to the Conference on Disarmament has worked diligently along with other delegations in order to elaborate a watertight Convention to ban chemical weapons. Egypt has always supported all measures designed to contribute to the promotion of international and regional stability and has always committed itself to engage in constructive negotiations to fulfil this objective. It is in this spirit that the delegation of Egypt, together with other delegations, has presented, in the course of the negotiations, amendments to the draft Convention, with a view to enhancing its universality.

Egypt has always attached great importance to including in the draft Convention issues that it regards as vital to its national security and interests. We genuinely hoped that

such concerns would be included in the text. In the final stage of the negotiations, various delegations expressed the view that the draft Convention should take into account the different positions of all the delegations that participated in the negotiations. It was not possible, however, to translate into provisions all the detailed proposals of each delegation. A number of States, including Egypt, felt that their specific reservations and concerns were not addressed and should be registered in the proceedings. Some of the concerns of Egypt and those of several other countries were thus circulated as working papers and are reflected in the report of the Ad Hoc Committee, which is contained in the report of the Conference on Disarmament.[2]

1 *Article II* is among the most important articles of the Convention since it defines chemical weapons, the core of this instrument. The wide-spectrum definition includes in its interpretation the entanglement of munitions and equipment, whether or not they are related to toxic chemicals, as long as the provision of article II comprises the word "separately" in paragraph 1. This opens the door to abuse of the verification procedures to the detriment of any State party. We had hoped that the proposal to leave the definition "Munitions and devices and any equipment specifically designed for use directly in connection with the employment of chemical weapons" to be elaborated by the Preparatory Committee. This concern has a bearing on article III, "Declarations", due to the fact that every State party to the Convention should be aware, in advance, of what it has to declare in view of the eventual destruction of chemical weapons according to the provisions of article I, "General obligations", and other relevant provisions of the Convention.

2 Compliance with the chemical weapons Convention depends to a large extent on the verification procedures. Intrusive as it is, the verification regime for activities not prohibited under the Convention in accordance with article VI

places an exaggerated burden on the civilian chemical industry by virtue of the challenge inspection procedure, which could lead to abuse and misuse.

3 *Article VIII* embodies the structure and functions of the Executive Council, its composition, procedure and decision-making. Egypt has long been known to support the principle of equitable geographical distribution as the basis for a just composition of the Executive Council.

It is also Egypt's conviction that all States parties to the Convention should have an opportunity to participate in the membership of this Council, thereby excluding the possibility of creating permanent seats. Egypt therefore advocated the application of the United Nations equitable geographical distribution of seats in this regard. This criterion might be supplemented by other parameters to be decided upon by each region, thus creating an adequate regional decision-making mechanism within each geographical group. However, we note that there is an imbalance in the distribution of seats among regional groups owing to the creation of semi-permanent seats. The largest regional group, Africa, which has 9 seats, was arbitrarily deleted from the seat rotating among the regional groupings of Africa, Latin America and Asia in paragraph 23 (*f*) of this article. Thus Africa was left again with less than fair treatment in comparison with all other regional groupings.

4 *Article IX*, on consultations, cooperation and fact-finding, is vital to the implementation of this Convention. There is general agreement that it entails high political value. Consequently, the verification mechanism provided for in article IX should correspond to the legal context of that article. It is in the light of the importance of the verification mechanism that the Egyptian delegation introduced a proposal for a safeguard against the possible abuse of this instrument. Unfortunately, the proposal was not adequately reflected in the draft Convention. It is worthwhile to note, with misgiv-

ings, that the powers of the Executive Council in as far as challenge inspection is concerned are less than adequate.

5 In addition, the draft Convention does not meet the requirement of providing full-scope security assurances to deal with instances of the use or threat of use of chemical weapons against a State party to the Convention by a State party or by a State non-party. This is a legitimate requirement which should be studied and addressed. The provisions of article X, "Assistance and protection against chemical weapons", stop short of providing sufficient guarantees and adequate obligations on the part of the five permanent members of the Security Council to oppose such a threat or aggression.

6 Article XI, on economic and technological development, is of great importance, and especially to the developing countries. Needless to say, developing countries are entitled to safeguard the promotion of scientific and technological knowledge in the field of chemistry for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes. They have the legitimate right to obtain assurances that the implementation of this Convention will not hamper the economic and technological development of the developing States parties. The present wording of article XI leaves open the possibility that States parties will eventually sustain damage to their economic and technological development as a result of the implementation of the Convention.

7 In view of its genuine need to live in peace and security and cooperate with other members of the international community, Egypt participated actively in the negotiations on the draft Convention and hoped that it would achieve global adherence by reflecting the legitimate sovereign rights and vital interests of all States. We appreciated the goodwill of the Chairman of the Ad Hoc Committee, who provided clarification of some provisions of the draft Convention. However, regarding his explanation on the definition of

chemical weapons in article II,[3] we find that it falls short of total clarity and is not completely satisfactory. Moreover, a question arises regarding the authoritative legal status at the level of interpretation of the Chairn's explanation. Nevertheless, his statement is indicative of the complexity of the draft Convention.

8 It is worthwhile to note that the compliance regime proposed in the draft Convention tends to focus, in particular, on the problem of weapons production and destruction within a transitional period. The actual use of weapons received inadequate attention in the Convention. Any delinquent country which already had chemical weapons could be in a position to use them. The best course of action to deal with this type of situation would be to provide for a deterrence system. The Security Council may consider adopting a resolution on full scope security assurances to comfort the concern of parties to the Chemical Weapons Convention. It would be much better to deal with such a problem early, before the poissibility of use or threat of use of chemical waepons in defiance of the provisions of the Chemical Weapons Convention.

9 In spite of these misgivings and concerns, Egypt, in a spirit of cooperation, did not stand in the way of a decision by the Conference on Disarmament to transmit the draft Convention to the General Assembly at its forty-seventh session.

The Chemical Weapons Convention and Security of the Middle-East Region

We believe that a good and balanced Convention on the prohibition of chemical weapons is a step forward, which enhances the implementation of President Mubarak's initiative of April 1990,[4] which called for declaring the Middle East a region free of all weapons of mass destruction under effective international control. The said initiative is intended

to involve all weapons of mass destruction, that is, nuclear, chemical and biological.

The draft chemical weapons Convention, the non-proliferation Treaty (NPT) and the biological weapons Convention are considered to be the three pillars on which such a zone should be established. Hence, from the regional perspective, we cannot dissociate the chemical weapons Convention from the NPT and the biological weapons Convention. We are firmly convinced that all States in the region should bear equal, reciprocal and balanced obligations deriving from all three above-mentioned international instruments governing weapons of mass destruction. In this regard, I would like to recall the letter addressed by His Excellency Amre Moussa, Minister of Foreign Affairs of Egypt, to the Secretary-General of the United Nations on 21 July 1991,[5] in which he enumerated basic elements for the promotion of international and regional stability and security. The said elements include, *inter alia*:

a A qualitative and quantitative balance between the military capabilities of all States in the region;

b The accordance of priority to ridding the region of weapons of mass destruction—particularly nuclear, chemical and biological weapons.

On 5 July 1991, Egypt had announced, through a statement made by Foreign Minister Amre Moussa, a series of additional ideas and proposals on the issue of regional disarmament in the Middle-East:

a The major arms-producing States, and particularly the permanent members of the Security Council, as well as Israel, Iran and the Arab States, were called upon to deposit undertakings with the Security Council in which they would clearly and unconditionally endorse the declaration of the Middle East as a region free of weapons of mass destruction and commit themselves not to take any steps or measures

which would run counter to or impede the attainment of that objective.

b The arms-producing Sates and the parties to the Treaty on the Non-Proliferation of Nuclear Weapons were called upon to step up their efforts to ensure that all nations of the Middle East that had not yet done so would adhere to the Treaty.

c States of the Middle East which had not yet done so were called upon to declare their commi'ment not to use nuclear, chemical or biological weapons; not to produce or acquire nuclear weapons or nuclear materials susceptible to military use and to dispose of any existing stocks of such materials; and to accept the International Atomic Energy Agency safeguards regime.

d Those States of the region that had not yet done so were called upon to declare their commitment to adhere to the NPT as well as the biological weapons Convention no later than the conclusion of the negotiations on the Convention on the prohibition of chemical weapons.

e The States of the Middle East were called upon to declare their commitment to address measures relating to all forms of delivery systems for weapons of mass destruction.

f The States of the region were called upon to approve the assignment to a United Nations organ or any other international organization of a role, to be agreed upon, in the verification of the agreements to be concluded between them.

The above-mentioned considerations also fall within the scope of the peace process currently under way, since the Madrid Conference aims at restoring a comprehensive, just and final peace in the Middle East based on Security Council resolutions 242 (1967) and 338 (1973). Ridding the region of all weapons of mass destruction by the adherence of all States in the Middle East to the NPT, the biological weapons Convention and the chemical weapons Convention would

constitute a confidence-building measure which would accelerate the peace process.

* * *

The question of weapons of mass destruction was reflected in the statement issued at the end of the summit meeting of the Security Council convened in New York in January 1992. The members of the Council affirmed that the proliferation of weapons of mass destruction constitutes a threat to international peace and expressed their commitment to deal with threats to peace and reverse acts of aggression. In the light of this statement and the opening for signature of the chemical weapons Convention, called for in General Assembly resolution 47/39 of 30 November 1992, the security concerns of all States should be addressed.

This could be accomplished through the Security Council's consideration of a resolution on full-scope security assurances regarding all weapons of mass destruction: nuclear, chemical and biological. A precedent was established by the Council's adoption of resolution 255 (1968). When the NPT was opened for signature, the Security Council welcomed, by that resolution, the intention of the three NPT signatories—the United States, the United Kingdom and the Soviet Union—to provide or support immediate assistance, in accordance with the Charter of the United Nations, in case of nuclear aggression or threat of aggression. This assurance stops short of providing full-scope guarantees to non-nuclear States, as it does not provide negative security assurances. Such full-scope assurances are of particular importance in the Middle East region now—a region liable to threat of use of not only chemical, but also nuclear and biological weapons until such time as these weapons are completely eradicated

from the region and until all countries of the region adhere to the above-mentioned three international instruments. The Security Council's examination of the question of full-scope security assurances would encourage all countries of the Middle East that have not yet done so to adhere to those treaties. Thus the Middle-East region would become a zone free of all weapons of mass destruction, in accordance with President Mubarak's initiative of 1990.

Notes

1 The other two legal instruments that deal with weapons of mass destruction are the nuclear non-proliferation Treaty and the biological weapons Convention.

2 See the report of the Conference on Disarmament (CD/1173), issued in *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 27* (A/47/27). The views of Egypt are recorded in paragraph 73, integral paragraph 23.

3 See ibid., integral paragraph 36, for the Chairman's explanatory statement regarding article II.

4 The statement of President Mubarak dated 8 April 199) is summarized in United Nations document A/45/219-S/21252.

5 A/46/329-S/22855, annex. The letter includes the additional ideas and proposals of 5 July 1991.

The Cost of the Chemical Weapons Convention for the Developing Countries

Hassan Mashhadi

Quite a lot has been said about the unique character of the chemical weapons Convention (CW Convention). While agreeing with most of the comments on its attributes, I do not intend to go into detail to repeat them here. The Convention is the first global treaty which aims at removing a whole category of weapons of mass destruction from the face of the earth; weapons which have been used in the past and deployed extensively during the 1980s.

Unlike other disarmament or arms control agreements such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in which the States parties are divided into two groups—those which are allowed to keep their weapons and those which should not possess them—the chemical weapons Convention allows no State party to either maintain its chemical weapons stockpile or acquire these weapons in the future.

For the first time in the history of arms control and disarmament, we are establishing a global system of verification to verify the destruction of existing chemical weapons and, through the control of chemical industries, to ensure that these weapons are not produced again. When ratified, the CW Convention will set up the first international verification organization in the field of disarmament. While there is the

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safeguards regime of the International Atomic Energy Agency (IAEA), it should be borne in mind that IAEA was established in 1957, following the "Atoms for Peace" proposal made by United States President Eisenhower before the United Nations General Assembly in 1953. The prime objective of the Agency was the peaceful use of nuclear power, not nuclear disarmament.[1]

The unique character of the chemical weapons Convention will certainly set a landmark in international relations and is considered one of the most tangible results of the termination of the cold war. This Convention will set a precedent for implementing other arms control treaties, and future negotiators will be able to draw on the experience gained in implementing verification mechanisms for a global chemical weapons ban. The Convention will in many ways serve as a "guideline for future global disarmament treaties, which underlines its importance both for disarmament negotiators and for government officials involved in the administration of arms control and disarmament treaties."[2] This reality made the job of negotiators at Geneva more difficult, since they were cognizant that any unwise and imprudent wording could have adverse effects on multilateral efforts in the future.

Another factor is that no other disarmament treaty involves the control of a whole industry. One of the important characteristics of the chemical weapons Convention is the verification of non-production of chemical weapons by the civilian chemical industry. This industry is by far the largest and the most profitable industry in the world, affecting directly the daily life of every individual and the level of welfare and economic development of societies.

Owing to the special character of the Convention and the impact it will have on their security and economic development, the developing countries have adopted a serious

attitude towards the treaty and have studied its various dimensions. A number of them presented their views on these matters in Ad Hoc Committee working papers, known as the "the 12-nation and 14-nation papers", in 1991. Subjects of the utmost importance to the developing countries, including mine, are the cost of the Convention that they will have to bear and how it can be made affordable for them. This fact will have tremendous impact on the universality of the Convention. The costs incurrred by the developing countries can be divided into two categories: direct and indirect.

Direct Costs

One of the unique characteristics of the chemical weapons Convention, as was mentioned earlier, is the establishment of a universal system of verification to monitor and ensure the destruction of present stockpiles and to prevent any activity in the future by States parties prohibited under the Convention. This verification mechanism is extremely complex in the actual scope of its activities and covers the following five types of activities:

1 Verification of the destruction of chemical weapons;

2 Verification of the destruction of chemical weapons production facilities;

3 Verification of non-compliance, to ensure that activities prohibited under the Convention are traced and checked;

4 Verification of permitted production in the chemical industry, to ensure that only the activities not prohibited under the Convention are carried out;

5 Investigations related to concerns of non-compliance (challenge inspection), to ensure that the cost of cheating will outweigh its benefits.[4]

To carry out all these activities, establishment of an international organization becomes necessary. In addition to verification costs, this international organization has to bear other costs, including those for administration and mainte-

nance. In a working paper dated 24 August 1991, the United States delegation in the Ad Hoc Committee gave the annual costs of the Organization as $163,548,185. Now the question is, who will pay for that? According to the provisions of the Convention, the States parties will have to pay based on the United Nations scale of assessment. However, the developing countries maintain that the share of the developed countries will be shifted onto prices of the chemicals they export, so that in the end it will be the developing countries which will have to shoulder the whole burden by importing more expensive chemicals. I sincerely hope that this will not be true. However, one expects that the first effect of the entry into force of the Convention will be a price increase of chemicals, particularly those designated as schedule 3 chemicals.

Indirect Costs

All agree that the universality of the chemical weapons Convention is a must. However, the North and the South propose different approaches to arrive at such a goal. The North, taking advantage of its economic, political and industrial dominance, seeks to achieve this universality through imposition of punitive measures for those which may decide to remain outside the Convention, while the South maintains that incentives should be given to States to enable them eagerly to join the Convention. The most important incentive for them is that the Convention, while prohibiting any misuse or abuse of the chemical industry, advances cooperation and transfer of technology in the chemical field among the States parties.

Chemical and biotechnological industries, due to their diversification of production, the high percentage of added value in comparison with other industries, as well as their important role for public welfare, will enjoy a special position in the developing countries by the turn of the century. Since the public welfare and their economic development are

considered to be tantamount to security, the significance of these industries to the developing countries becomes axiomatic.

The developing countries started their chemical industries in the mid-1960s with much emphasis on consumer industries. This caused them to become dependent on intermediate additives of refined chemicals of the developed world, which sometimes reached up to 80%. Some of the countries in the South whose national revenue mainly comes from agriculture and are not able to produce so-called technical grade pesticides as well as pharmaceutical raw materials are vulnerable to restrictions imposed by verification mechanisms. Some of the concerns of the South are that there will be:

1 an unreasonable rise in prices of many chemicals, particularly the phosphorous ones, to compensate for the verification costs borne by the industries in the North;

2 reluctance regarding the transfer of technology in chemical products, particularly in pesticides under the pretext that they may be used for chemical weapons production;

3 the creation of impediments in chemical trade due to an increase in red tape and in the decision making hierarchy;

4 a decrease in competitive markets and the possible establishment of giant chemical-industry monopolies;

5 a coming into existence of discrimination and suspicion in the international chemical trade;

6 politicization of a purely commercial or technological subject;

Other indirect costs can also be identified. The regulation costs will be greater for the developing States. As I said earlier, there are a number of repercussions possible from the chemical weapons Convention. First, huge regulatory costs for the small chemical industries of the developing countries could even force them out of business. The gigantic enterprises of the West are already following their national

rules and regulations such as those designed for protection of the environment. In other words, the costs of new regulations could lead to the creation of chemical cartels in the world and to the annihilation of small chemical industries.

Second, certain technologies may be prevented from being sold to the Third World. Many companies in the West may prefer not to sell "capable facilities" to the developing countries, and, if they do, they may charge more to cover the perceived risks involved in such sales.

Third, some purely commercial transactions in the chemical field may become unnecessarily politicized—in which case, the developing countries would have to bear the consequences. They have less powerful political leverage to manipulate the new situation.

Fourth, the bureaucratic costs due to controls and obligations to provide detailed declarations will bear disproportionately heavily on the industries of the developing countries which are not accustomed to doing this work under their national legislation.

Some proposals and examples

The question may arise as to how these costs can be minimized to make the Convention more attractive to the developing countries. Although ready-make solutions are not to hand, ideas which might be considered would include the following examples.

1 Withdrawal of existing discriminatory restrictions in the export of chemicals and their technology among the States parties. Restrictions whether unilateral, bilateral or multilateral such as those envisaged by the Australia Group to check the proliferation of Chemical Weapons should be lifted once the Convention enters into force. These restrictions made sense in the absence of a Convention with verification mechanisms. The assurances given so far are not adequate.

2 Undertakings by the Western States parties not to let the prices of chemicals of their industries rise unreasonably and in fact to put a cap in place to prevent this, taking into account all legitimate economic considerations of their industries.

3 Adopting measures to promote universal adherence to the Convention through transfer of technology, material and equipment for peaceful purposes in the chemical fields as demanded by the summit of the Non-Aligned Movement in Jakarta, Indonesia in September 1992.

4 Financial contributions from non-governmental, non-profit and tax deductible organizations to start off the preparatory committee of the Chemical Weapons Convention. The Western chemical industries can donate equipment and means needed by the technical Secretariat and international inspection teams free of charge.

5 Financial and technical assistance to those countries which seek to destroy their chemical weapons.

6 Cooperation and assistance in the field of protection against possible use of chemical weapons as stipulated in article X of the Convention. The fund envisaged in this article is voluntary. We should ensure that it will not remain empty.

7 Providing technical training to experts from the developing countries as potential inspectors in the Technical Secretariat of the Organization or as personnel of their respective national authorities which will provide for liaison between the Organization and the national responsible organs. It has been three years since Finland started such training, and Germany began last year, but there is a need for further training programmes by other industrialized countries.

8 Assistance to the States parties from the developing countries to establish their computer systems to have a database for keeping track of declarations and successfully carrying out their obligations under the Convention. Many

violations of the provisions of the Convention particularly in the first years may not come as the result of bad intention but more from lack of expertise, lack of technical know-how for data-collecting and data-reporting, lack of money to support such a huge enterprise either through buying a computer system or recruiting personnel to the job or simply lack of experience.

Conclusion

The conclusion which I would like to draw is that the negotiations on chemical weapons started more than two decades ago as an aspect of the East-West conflict and ended somehow as a North-South competition. Now there is a great opportunity to turn the chemical weapons Convention into a vehicle for concrete cooperation among all in a bid to create a safer world for generations to come.

Many points discussed during the negotiations have not been included in the text of the Convention and therefore very much depend on the good intentions of States parties to the Convention. Either it will become another point of animosity among States or a cradle of cooperation and a good prelude to a new world order. It is up to the States parties to decide which path they choose to follow.

Notes

1 The stated objectives of the Agency as reflected in its statute are to: "accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure..that assistance provided by it or at its request or under its supervision or control is not used in such as way as to further any military purpose (article II)."

2 Lunbo, Sten. "The Economic Consequences of chemical Weapons Disarmament". *Disarmament Agreements and Negotiations: The Economic Dimension*. Edited by Serge Sur. UNIDIR, Geneva, 1991, p.214.

3 Sutherland, Ron. "*Chemical Weapons*". International Verification Organizations, p.49.

The Chemical Weapons Convention: A Third-World Perspective

Prakash Shah

The 1992 session of the Conference on Disarmament (CD) was undoubtedly the most productive in recent memory. After some 20 years of slow, often somnolent negotiations, the CD adopted a draft Convention banning chemical weapons (CWC) and transmitted it by consensus to the United Nations General Assembly. On 30 November, the Assembly adopted without a vote resolution 47/39, co–sponsored by over 100 countries, by which it commends the draft Convention and requests the Secretary-General to open it for signature in January 1993.

For all practical purposes, the tentative steps taken in 1968 to discuss agenda item 4 in the Eighteen-Nation Committee on Disarmament finally culminated in a comprehensive Convention during the 1992 session of the 39–nation Conference on Disarmament.

Even though the biological weapons Convention was signed in 1972, the discussions on a possible CWC remained

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desultory and unfocused till 1984, when the Ad Hoc Committee on Chemical Weapons was set up by the CD to start "the full and complete process of negotiations", and work out the Convention. The Committee worked on the basic structure of the "rolling text" established that year. While the work in the Committee continued, the lack of political will in the chemical weapons countries and the nuclear focus on disarmament matters made the conclusion of a CWC a distant goal.

Regrettably, it was an avoidable calamity, in the form of the war in the Persian Gulf following Iraq's invasion of Kuwait, which provided the final impetus to the slow-moving negotiations on a CWC. The threat of Iraq's launching a chemical weapons strike at any time during the war catapulted the chemical weapons issue to the top of the disarmament agenda. While Iraq did not, ultimately, use any chemical weapons during the war, the enormity of such a possibility in the future and the unfolding knowledge among Western Governments that technology, material and expertise on chemical weapons were regularly, though clandestinely, passed on by corporations and companies in the West to many Arab nations spurred them into real action to achieve a CWC by 1992. This led to the intensification of the negotiating process in the CD in 1991 and it reached its climax in 1992.

Neither the languid, somnolent phase of negotiations in the 1980s nor the hectic, intensified phase in the 1990s was the result of any act on the part of the developing countries or the Group of 21 in the CD. The pace of negotiations was influenced by the the political and security perceptions of countries of the North Atlantic Treaty Organization (NATO), primarily in the context of, first, the cold war and, second, the situation in the Persian Gulf and the Middle East. The uncertain events unfolding in the "East" following the collapse of the Soviet Union and the resulting danger of

"proliferation" of chemical weapons may have been yet another factor in Western calculations on this issue.

As far as the developing countries as a whole are concerned, chemical weapons have never been considered a significant threat to their security. Some Arab and Islamic neighbours of Israel perceived chemical weapons as deterrents against an Israeli nuclear threat, though this perception was not shared by most developing countries. For many of them with growing civilian chemical industries, the concern was the economic and industrial implications of a CWC. Their concern was heightened by what they considered unilateral, arbitrary and discriminatory trade and technology transfer arrangements by the industrialized countries under the umbrella of the Australia Group. The intrusion of international inspectors and bilateral observers into the chemical industries of developing countries with not even a hint of chemical weapons activity was yet another source of concern to many of them.

For these and other reasons, the perspective of developing countries and their stand in the chemical weapons negotiations were naturally different from those of the developed world, for whom political and security interests were predominant. As negotiations on the details of a CWC continued at an impressive pace in 1992, many developing countries felt that despite their abhorrence of weapons of mass destruction, their particular concerns about the underlying concepts of the Convention were not being fully reflected in the negotiations. It was also felt by many that, on some particular issues, especially those related to verification, there was a tendency to marginalize or to ignore some of their specific concerns. During the concluding phase of these negotiations, however, efforts were made to overcome these differences, and finally the desire to conclude a multilaterally negotiated CWC prevailed over prospects of failure.

In the negotiating process itself, the draft treaty submitted by Australia[1] was the first serious attempt to offer a solution to all outstanding problems in the rolling text, and all footnotes were eliminated. This enabled the Chairman, Ambassador von Wagner of Germany, to present in May a working paper for the final phase of the negotiations.

For a number of years, the stand of the United States Administration with regard to keeping a 2 per-cent security stockpile till all other chemical-weapons possessor States had destroyed their stocks to equivalent levels cast its shadow over the negotiations. The great fear of developing countries was that the Convention would be yet another non-proliferation instrument creating two classes of States: one consisting of the "responsible" countries, which already had the capacity and stockpiles and whose interest would somehow be legitimized, and the other consisting of those "irresponsible" developing countries, which did not have either the capacity or the stockpiles and which were merely being asked to acquiesce in the discrimination. Instead of a Convention aimed at the total and complete elimination of chemical weapons, it could then have become a thinly disguised tool to prevent the "spread" of chemical weapons. Developing countries were squarely opposed to such a result as well as to all ad hoc, stopgap, partial or discriminatory measures aimed at a selective fragmenting of this global problem. Fortunately, the United States changed its policy in May 1991, and this helped considerably in moving the process forward.

The Chairman's draft paper of May 1992, while creating a basis for the Convention, aroused apprehension in the minds of many developing member countries of the CD. Their concerns encompassed a whole range of issues. Denial of developing countries' access to peaceful chemical technology, material and equipment, the extent of intrusiveness of the verification system, including verification for activities not prohibited under the Convention, the possible abuse of

challenge inspection procedures and the desire to protect and safeguard sensitive information and installations not relevant to the Convention were some of the major concerns which prompted a group of 12 developing countries (later expanded to 14) to propose detailed comprehensive amendments to the Chairman's working paper. The negotiations in May-June 1992 centred around the amendments presented by the group of 14 developing countries (G-14), though some of them thought that the negotiations were less about amending the draft paper than about appearing to do so. There was also unjustified suspicion among some developed countries that the amendments were intended merely to delay the negotiating process. The fact remains that the G-14 amendments that were presented in a series of working papers were a positive contribution to the final Convention and were intended to be constructive from the outset. The result was a revised working paper that was issued by the Chairman in June.

It would be useful here to examine some of the major concerns which led to the G-14 amendments in order not only to appreciate the negotiating process, but also to understand the importance of proper implementation of the Convention in order to allay these concerns.

On article XI, relating to economic and technological development, there was a clear desire on the part of developing countries to ensure that, once the Convention entered into force, all existing discriminatory restrictions outside the scope of the Convention, based on unilateral action or harmonization of export control policies, would cease to exist among States parties. Given the fact that the CWC would subject the chemical industry and other facilities in all countries to verification procedures and would contain procedures for sanctions against potential violators, it seemed that current unilateral restrictions of this kind would have no

place once the chemical weapons Convention entered into force.

The prime focus of this apprehension was the Australia Group and the announced desire of some of its members to perpetuate it, regardless of a CWC. The developing countries believed that the solution to concerns prompting the activities of the Australia Group lay not in unilateral, arbitrary decisions, but in multilateral arrangements and agreements arrived at through negotiations and universal participation. Despite intense negotiations and efforts to bridge the gap in the position of the two sides, a solution eluded them in the May-June negotiating phase.

Nevertheless, the discussions continued as the deadline neared. The compromise which finally enabled a consensus to emerge was symbolic of the desire on the part of developing countries to promote and achieve a CWC. Without committing themselves to the dismantling of the Australia Group, its members agreed to a statement made on 6 August by Ambassador Paul O'Sullivan of Australia on behalf of the members of the Group that were members of the CD, which indicated the willingness of the Group to remove restrictive measures on international cooperation and trade in the chemical field. Even though it was related to the fulfilment of certain conditions, this statement indicated recognition of the developing countries' concerns. While this was not satisfactory by itself, changes made to the actual language contained in article XI enabled developing countries to drop their insistence on their proposed amendments.

Translation of this intent into action as the CWC is implemented will be a crucial factor. National implementation measures under article VII of the Convention will require that existing national regulations with regard to trade in chemicals, equipment and technology be harmonized with the obligations under the Convention, and it will be necessary to ensure

that they are reviewed for the benefit of all States that adhere to the Convention and comply with its provisions. There are still lingering apprehensions on this score. Any intention to continue dual regimes of controls after the Convention enters into force would expose those attempting to do so to charges of insincerity.

Developing countries are firmly of the view that the Convention should not be used, under any circumstances, to deny them unhindered access to peaceful technology in the chemical field and to the supply of chemicals, equipment and material. They believe that all existing discriminatory restrictions on trade relating to scheduled chemicals as well as equipment should be removed immediately upon the Convention's entry into force. As they see it, the commitment underlying the statement made on behalf of the Australia Group in the CD on 6 August will have to be carried out fully and promptly. They also feel that the Australia Group will have to dissolve itself both in letter and spirit as far as trade in chemicals and related equipment is concerned, in order to promote healthy universality and credibility for the Convention.

In the field of routine verification of the chemical industry, there were two schools of thought. The first, championed by the developing countries, argued that verification provisions had to focus on the relevant chemical industry producing the scheduled chemicals; and the second, reflecting the perspective of the developed countries, argued for verification activities to be extended to the entire chemical industry dealing with any discrete organic chemical, with a few exceptions. Related to this were differing perspectives on the thresholds for verification, the inclusion of processing and consumption in addition to production of scheduled chemicals, and the selection process. A compromise was finally achieved on these differing perspectives whereby thresholds were raised in an effort to eliminate the smaller, "backyard" producers, verification efforts were focused on the production

of scheduled chemicals and, while declarations were to be made for the production of discrete organic chemicals, their verification would be the subject of further discussions and decision by the Conference of the States Parties three years after the entry into force of the Convention. The national selection process for verification of facilities producing discrete organic chemicals would also be a subject for further decisions by the Organization and Conference of the States Parties.

Many developing countries still feel that these efforts were not enough. They believe that some of the Convention's provisions relating to routine verification will place a higher and unnecessary burden on the civilian chemical industries of developing countries and will increase the cost, thereby affecting the economic viability of their chemical industry. They also feel that the requirement for declaration and verification of a large number of small chemical facilities which have no relevance to chemical weapons is yet another unnecessary burden imposed on developing countries. In the future implementation of routine verification activities by the Organization, care will have to be taken to ensure that these activities are kept to a minimum necessary in order to inspire confidence, are focused and easily affordable, and can be implemented. If this is not so, the costs of verification will inevitably put a heavy burden on developing States parties to the Convention, making it less attractive for developing countries to join it.

The challenge verification provisions of the Convention were also the result of extremely difficult negotiations and remain a source of some concern. In the view of some developing countries, the intrusive nature of the challenge inspection procedure finally developed is such that the possibility of misuse and abuse cannot be entirely ruled out. Due to zeal to ensure that each and every possible scenario of "cheating" is covered by these provisions, some unrealistic

time-frames may have been built into the challenge inspection procedure. Therefore, in implementing these procedures and in calculating the time it will take an inspection team to arrive at the point of entry, the Technical Secretariat will have to take into account the respective time zones of the inspected State party and the seat of the Organization, the geography and infrastructure of that country and the location and accessibility of the inspection site *vis-à-vis* the point of entry. Otherwise, the provision of a 12–hour initial notification period—which has been built into the Convention—could place the inspected State party in a position where, for practical reasons, it might be unable to fulfil its obligations under the Convention. Similarly, the time-limit of 12 hours within which the Executive Council will have to meet to review the request for a challenge inspection could prove to be impractical and unrealistic if the request is submitted late in the evening to the Organization. Ways and means to ensure that a meeting of the Executive Council is possible under these conditions will have to be found if this time-frame is to be adhered to in the context of the Convention.

Provisions on destruction of chemical weapons and chemical-weapon production facilities, which were agreed to in the negotiations quite some time ago, had to be revised during the final phase of negotiations due to the stated inability of the Russian Federation to meet them. As a result, extension of the destruction time-limit by a maximum of 5 years in addition to the 10–year time-limit built into the Convention and conversion of chemical weapons production facilities are now possible under certain conditions. Developing countries which have always stood for a minimum time-limit for the destruction of chemical weapons and their related production facilities felt that their views on this important issue were ignored in the final phase of the negotiations. Care will, therefore, have to be taken to ensure that the extension

provisions are invoked only if absolutely necessary and not as a matter of course, if the chemical weapons Convention is to inspire the confidence of States throughout the world.

Despite the improvements in the text of article X, dealing with assistance in the case of use of chemical weapons, which were made through last-minute negotiations, some developing countries still feel that, unlike the unambiguous provisions relating to verification, there is no binding and clear-cut commitment for financial contribution envisaged in the article. It will, therefore, be necessary to ensure in the future that the so-called "voluntary fund" has enough resources to be of use when needed.

Before the Convention's entry into force, the Preparatory Commission will have to deal with several important subjects, for example, developing appropriate percentages to apply to low concentration of scheduled chemicals, developing guidelines for the verification facilities which are engaged in "captive use" of scheduled chemicals, developing rules and procedures for the organs of the Organization and preparing inspection manuals and, above all, defining chemical weapons under article II. In all these tasks, universality and non–discrimination will need to be the primary objectives, and ways and means will have to be found to ensure accession of all countries in all regions of the world.

Despite these fundamental concerns, I am convinced that developing countries will overwhelmingly support and join the Convention. Early conclusion and universal adherence to a comprehensive Convention placing a total and verifiable ban on chemical weapons are important steps in the field of multilateral disarmament. It is important to them that the Convention will outlaw an entire category of weapons of mass destruction.

Though the developing countries as a whole did not give the same importance to the CWC as a security treaty that

the developed countries did, they recognize that it will enhance security for all. Even though the Convention does not meet all their concerns, they know that it obliges the possessors of chemical weapons to destroy them and to become non–possessors.

Much has been said about the value of the CWC verification regime and its precedent-setting role for future globally negotiated multilateral regimes. It is true that verification is considered by many to be the core issue of the CWC. The many years of negotiations have resulted in establishing a balance between credible verification on the one hand and national sovereignty and security on the other. These achievements will remain the basic guiding light for verification regimes in future treaties/conventions.

However, what is more important in my view is the precedent-setting significance of the Convention itself, about which little has been said. The United Nations General Assembly addressed the question of weapons of mass destruction as early as the late 1940s, identifying them as biological, chemical and nuclear weapons. The biological weapons Convention was negotiated in 1972, and we have just concluded a chemical weapons Convention with a strict verification regime. Humanity is still in danger of extinction by nuclear weapons, whose possessors are, as yet, under no legal obligation to destroy or eliminate them since no multilateral or international regime on nuclear weapons exists. As a globally negotiated regime with effective verification, the CWC provides an excellent precedent for work on a similarly negotiated, verifiable convention on nuclear weapons.

The chemical weapons Convention is a path-breaking accomplishment to which all countries contributed in some measure. It is a truly global effort. It is bound to influence multilateral progress in other areas of disarmament, especially

in the field of nuclear weapons, wherein it should be emulated. In the process of negotiations leading to the CWC, remarkable accommodation was shown by all participating nations in narrowing gaps between differing perspectives, in agreeing on principles and in engaging in a cooperative effort to construct a regime-building enterprise envisaging global regulation for common benefit. How to build on this solid foundation in order to achieve nuclear disarmament is our next challenge.

Note

1 CD/1143.

A Latin American View of the Convention on the Prohibition of Chemical Weapons

Roberto García Moritán

The question of chemical weapons is one of the areas of arms limitation that has occupied the international community's attention since the first decades of this century. The use of asphyxiating gases on the European battlefields of the First World War awakened humanity's conscience to the unusually cruel and indiscriminate nature of chemical weapons and emphasized the terrible transition in our century from professional to total war, in which no sanctuaries or protected zones remained for the civilian population.

The Geneva Protocol of 1925 established a legal check to this threat and undoubtedly marked a step forward.

Nevertheless, the final word had not been said with respect to chemical weapons, and the 1930s saw a reversion to their use. It is interesting to note that during the Second World War, in spite of the enormous and almost uncontrolled use of all the means of destruction invented up to that moment—including nuclear weapons—chemical weapons were hardly used. This is an indication that the analysis the strategists and military decision makers had made regard-

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ing the use of chemical weapons had led them to the conclusion that their effectiveness from the military point of view was at least highly questionable.

That did not prevent the continued inclusion of chemical weapons among the arsenals and options of the great Powers of the second post-war era, both the chief military Powers and those of lesser importance.

The recent use of such weapons in the Middle East reminded the whole world of their threatening nature and their destabilizing character with regard to regional security. Indeed, their use in recent conflicts such as the war between the Islamic Republic of Iran and Iraq gave rise to a lively technical and military debate as to whether or not they were relevant as an instrument of war.

Although opinion was not unanimous on the matter, it may be said without oversimplification that there is broad agreement that chemical weapons cannot be regarded as a strategically decisive factor in modern war, particularly in view of the high degree of sophistication of the means of protection developed, which substantially reduces their military value.

It might legitimately be asked, then, what importance the Convention on the prohibition of chemical weapons has if the chemical weapons we are prohibiting are of little military value. It is at this point that our judgement must be refined.

It may be easy to neutralize chemical weapons in some theatres of war, such as those in which an East-West confrontation might have taken place, where the availability of means of protection might have made resort to chemical weapons ineffective. But this argument loses much of its force in a different context, such as that of a regional confrontation outside Europe.

Moreover, the relative ineffectiveness of chemical weapons as an essential means for deciding the fate of a

military operation does not exclude their employment as a psychological weapon—precisely because of their destructive nature—if the use of chemical weapons is regarded as a useful instrument for obtaining a miltiary advantage through terror.

It seems clear then that the doubtful effectiveness of chemical weapons from a strictly military point of view is insufficient to guarantee their non-use.

Moreover, what we are dealing with is a weapon of mass destruction that is relatively easy to develop, the basic technology for which is several decades old, so that a country wishing to provide itself with chemical weapons would, in all likelihood, encounter no major technical problems.

Considerations such as these make it unnecessary to reiterate that the existence of a convention completely prohibiting the development, production and stockpiling of chemical weapons, and providing for their destruction as well as the unconditional prohibition of their use would surely make this world a safer place.

As regards Latin America and the Caribbean, unlike other less fortunate regions of the planet, there is absolutely no example of their use or even production by any of the countries making up the Latin American community. This enables us to deal with the question from an almost comfortable point of view, if that word is appropriate in the case of instruments of destruction so devastating.

Taken to an extreme, this logic would indicate that the subject is not a matter of priority for the region in the absence of a specific threat.

That has not, however, prevented Latin America and the Caribbean from taking the lead in other areas of disarmament in the past, establishing standards which acquired an exemplary character for other regions of the world. Thus, from 1963, Latin America embarked on a process intended to bar nuclear weapons from the region. The Treaty

of Tlatelolco and its Additional Protocols was thus a powerful political message from a region without nuclear weapons that was addressed to the rest of the world.

In the same way, in the field of conventional weapons, the 1974 Declaration of Ayacucho marked another milestone with respect to the agreed limitation of conventional weapons, initiating a process which then became institutionalized under the rubric "confidence-building measures".

Latin America, which is proportionally the planet's least heavily armed continent, lived up to its best traditions in adopting the Declaration of Mendoza, signed between Argentina, Brazil and Chile,[2] on chemical and biological weapons, and the Declaration of Cartagena,[3] in which the countries of the Andean Pact adopted a clear position against such weapons of mass destruction. In spite of the existence of these commitments, the security of the region and of each of its nations can only be complete with the entry into force of multilateral agreements prohibiting categories of weapons for all States forever. With respect to such weapons, no sanctuaries exist. All of us may, at some time, suffer from their effects, as long as they exist. And that applies to arms of little military value, such as chemical weapons.

Apart from the strictly military aspects of security, mention should also be made of the *economic and commercial effects* of the Convention on chemical weapons once it enters into force.

In order to ensure its effective implementation, this Convention will be provided with verification machinery that can well be termed unprecedented. Its central component in this respect involves challenge inspections, the purpose of which is, in fact, to provide the States parties, through a delicate process, with the necessary guarantees in those situations in which a suspicion of violation exists or in

ambiguous situations sufficiently serious to be considered a serious threat to the Convention. These inspections go to the heart of the prohibition, and ensure that the Convention will be robust, effective and very difficult to violate.

In this area of what might be termed politically sensitive inspections, the framework of the Convention is seamless. Mechanisms like those of "controlled access", worked out carefully and in a balanced manner, constitute a basic guarantee that the provisions of the Convention in this area will not be abused or used for purposes which go beyond the simple clarification of a given situation. I think I can add that, from the Latin American point of view, the more intrusive the system of challenge verification the more the interests of regional security are protected.

It is worth a digression to touch on the subject of inspections of activities not prohibited by the Convention, or what, in the language of the negotiations, is also referred to as inspections under article VI. This part of the Convention's verification scheme is precisely the one which will have direct consequences for the civilian chemical industry. The approach here is different from that of the first mechanism (challenge inspection). There are thus two systems: one which must be regarded as complete and reliable—the challenge inspection—and another which is more balanced—that of article VI.

This difference prompts a series of observations that are directly related to the Convention's impact on the activities of States with respect to the civilian chemical industry, whether private or public.

The verification system envisioned for this industry under article VI entails some kind of routine inspections, that is, inspections which are not in response to specific complaints or suspicions of violation, but merely verify that the chemical substances produced by the industries are used for purposes not incompatible with the purposes of the Convention, and

that the kinds and quantities of chemical substances produced are strictly limited to those agreed on as compatible with those purposes.

With respect to transferred substances, the verification system confines itself to ensuring that the substances transferred will not be the object of a further transfer for prohibited purposes.

As these provisions show, the verification machinery established is fully demarcated and governed by the principle—laid down in article VI of the Convention—that all these activities shall be carried out in a manner that does not hamper economic and technological development or international cooperation in the field of peaceful chemical activities.

These provisions include elements of the greatest importance for the chemical industry, are reasonable and non-intrusive and, above all, do not create obstacles to the completely legitimate activities of the chemical industry.

When dealing with questions which are inevitably technically complex, it is important to remember that the central objective of the Convention is to eliminate chemical weapons; it is not to establish unnecessary controls over a sector which is regarded as an important component of national economies, is of high added value and makes, moreover, an outstanding contribution to the development and progress of Latin American societies.

A very broad statistical survey shows that there are a number of States in Latin America and the Caribbean whose chemical industries amount to 5 per cent or more of their national product. These are, moreover, growing sectors that are not completely integrated and require, therefore, large imports of raw material for further processing and synthesizing.

All this emphasizes the importance of the fact that the Convention makes adequate provision for these situations and

explicitly supports cooperation and the broad exchange of substances and products related to the chemical industry.

The Convention presents global characteristics which will establish a norm for the coming century. Among them may be mentioned the political understanding that no requirements beyond those agreed on in the Convention shall be imposed on the States parties, unilaterally or multilaterally, in order for them to gain access to international cooperation in the peaceful uses of chemistry. The significance of this aspect of the Convention is that it grants tangible benefits to those States adhering to the Convention and imposes significant restrictions on those which do not.

It may therefore be useful to make a distinction between national measures to end the proliferation of chemical weapons, such as those now proposed by the Australia Group, and global measures agreed on multilaterally between the States parties to the Convention on chemical weapons.

In the absence of a global Convention, national measures may fill the vacuum. But in a context of this kind, it is unquestionably much more difficult and politically more complicated to investigate the possible dissemination of chemical weapons. The Convention establishes a completely different situation. Firstly, a State party must give up the option of acquiring chemical weapons. Secondly, it will have assumed the obligation of ensuring that its own institutions verify that no violations take place either at the national level or with respect to other countries. Thirdly, it will have accepted international verification on its own territory by the Organization for the Prohibition of Chemical Weapons.

These conditions create a much more effective system for deterring and detecting clandestine violations of the Convention than current means provide, even though the present capacity for at least detecting hidden production facilities seems effective enough.

From this point of view, the entry into force of the Convention will create a framework for mutual confidence among the States parties, which will help to increase international cooperation in this field. And this will be so because the accession of a State to the Convention will be accepted as a "sufficient guarantee", thus promoting the greatest possible exchange of chemical substances, equipment and technology for peaceful purposes.

The fact that the guarantee of not producing chemical weapons will be adequately verifiable will render an attempt to impose any other condition on parties to the Convention discriminatory.

The Convention on chemical weapons is a non-discriminatory treaty, since the States parties will be on an equal footing when the process of destroying existing chemical weapons and production facilities has been completed. From that moment, the Convention will serve as a model of a type of agreement that differs from those which give legal sanction to the existence of two categories of States.

In this multilateral instrument, there is only one category of States, all with the same rights and obligations, and with verification machinery which is identical for all. The Convention will not be a conferer of global power, as the non-proliferation Treaty seems to be. Thus we have within our grasp a convention that is non-discriminatory from the political and military point of view.

I believe that we have also succeeded in making it non-discriminatory from the economic, commercial and technological points of view. That is to say, the Convention has not been conceived in a way that will enable it to be used to preserve commercial inequalities or to hamper the development or the access of the States parties to chemical technology, equipment or substances.

The negotiations have run their course and the time for political decisions is approaching.

They will no doubt be the subject of careful analysis in each of the capitals of the world, including those of Latin America and the Caribbean.

Those who have been direct participants in the negotiations—and I venture to include in this judgement the Latin American colleagues who are taking part in the negotiations (Brazil, Cuba, Mexico, Peru and Venezuela) and the observer delegations (Chile, Colombia, Costa Rica and Uruguay, among others)—have sought to promote the drafting of a balanced instrument, one which, without losing sight of the central goal of eliminating chemical weapons, does not affect the normal activity of the industry and does not have negative economic or commercial effects.

I believe that that goal has been achieved.

If that is so, it may not be illusory to imagine that Latin America and the Caribbean will accede to the Convention on chemical weapons unanimously, simultaneously and in the same document.

The political significance of such a gesture could not be clearer. It would confirm that no threats to world peace and stability are to be expected from Latin America and the Caribbean, but, on the contrary, the reaffirmation of a noble tradition of compromise consistent with the security of all.

Notes

2 A/46/329-S/22855, annex, and CD/1098.

3 CD/1126.

The Chemical Weapons Convention, and the Security and Development Needs of Brazil

Celso L. N. Amorim

This article sets out to discuss the importance for Brazil of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. It will be easier for the reader to understand the question under discussion if he can place my country in the Latin American and world contexts.

What are the security concerns of a country like Brazil, which spends less than 0.5 per cent of its GDP on defence? What are the strategic values in Latin America, a region recognized to be the least armed area in the world? How concerned is the region about defence against potential aggressors? Aren't the economic and social problems in some countries of the region more urgent than other concerns? These are just some of the questions that Brazilian military and political planners are constantly asking themselves, some of the replies to which are rather obvious.

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Regardless of the parameters adopted for analysis, it is very clear that the strategic values for Latin America are significantly different from those in most areas of the world. The absence of prolonged or intense international conflicts, ethnic rivalries and religious or cultural confrontation is characteristic of the region. The tensions that were inherited from colonization as well as those that emerged with independence—"birth pangs", one might call them—were in most cases solved in one way or the other, but often through diplomatic means, in the first century of the existence of these countries as autonomous entities.

To be sure, rivalries did persist and tended to become more acute when military Governments or personal dictatorships imposed themselves on the will of the populations. Very seldom, however—and fortunately not in the case of Brazil in the last hundred years—did they degenerate into full-scale war. As democratic Governments emerged from the dark period of authoritarian rule in most countries in Latin America, projects of cooperation and even of real integration became the main feature of regional relations, pushing the risks of conflict even further away.

In this favourable scenario, it became our common understanding that Brazil's role in the region and in the world would not result from military superiority or extraterritorial ambitions. On the contrary, our capacity for influencing events in the world context would depend on our capacity to build and consolidate a multiracial society capable of providing equal opportunities and administering economic and social justice. This is no easy task for a country of approximately 150 million people spread over more than 8 million square kilometres, whose early social evolution was largely based on the use of slave labour. It should be, therefore, and in fact it is—in spite of our shortcomings—the focus of our energy.

Weapons of mass destruction are not on the list of Brazilian procurement needs for defence. Since the time when chemical weapons were first used, the Brazilian Government has consistently argued against the use of these and all other inhumane[1] means of warfare. A natural consequence was Brazil's signing, on 17 June 1925, of the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Bearing in mind the need to strengthen the regime of the Geneva Protocol, the Brazilian delegation supported initiatives to that effect that were proposed at the Eighteen-Nation Committee on Disarmament (ENDC) in the 1960s by the United States, the Soviet Union and the United Kingdom. It was not possible at that time to agree on the elimination of both chemical and biological weapons, but a Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction was finally concluded and opened for signature on 10 April 1972. Brazil signed the Convention on that date and ratified it on 27 February 1973. Negotiations on a chemical weapons convention would continue for another twenty years!

Brazil rejected atomic weapons as a defence option from the very beginning and joined those willing to promote nuclear disarmament and the destruction of nuclear arsenals. At the same time, it insisted on maintaining its right to develop and use nuclear technology for peaceful purposes, on an equal footing with all countries, while accepting and strictly applying appropriate controls on nuclear materials in accordance with the safeguards system of the International Atomic Energy Agency. Brazil, did not, however, join the non-proliferation Treaty (NPT), a decision renewed by successive Brazilian Governments. One of the difficulties was that it seemed unreasonable to accept the division of the world, as enshrined in the Treaty, into possessors and

non-possessors of nuclear weapons and the establishment of different rights and obligations for each category of countries. Moreover, the NPT did not commit the nuclear-weapon possessors to eliminate their arsenals, nor did it prohibit them from conducting nuclear-weapon tests and developing new nuclear-weapon systems.

In this connection, it is very unfortunate that article VI of the NPT has never been respected. There has been no multilateral negotiation on "measures relating to cessation of the nuclear arms race ... and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control". Moreover, the weak verification regime of the Treaty, already limited in scope in relation to nuclear-weapon possessors, has proved to be insufficient to deter proliferation. Finally, the language of article IV of the NPT has not been capable of ensuring that developing countries would benefit from the application of nuclear energy for peaceful purposes. The Treaty has not established appropriate controls on nuclear material and technology that would prevent diversion to non-peaceful use while providing for, at the same time, the technological development of all States parties. In order to fill such gaps and to reinforce the non-proliferation regime, other types of controls have been devised over the years. The inherent imbalance of the NPT, its shortcomings and the need to correct them were in the minds of the Brazilian negotiators of the draft chemical weapons Convention.

Despite the fact that the nuclear-weapon States still avoid committing themselves to a nuclear-test ban, the Brazilian Government has consistently stated that it has no plans for testing nuclear weapons on its territory. More recently, during the forty-fifth session of the United Nations General Assembly, the President of Brazil declared that no nuclear tests would be carried out, even for peaceful purposes. Explosions for peaceful purposes are provided for under

article 18 of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), which was signed and ratified by Brazil. It was felt by the Government that there would be no justification for such tests until a clear distinction could be made between nuclear tests of weapons and tests for peaceful purposes. The same understanding was included in the Agreement for the Exclusively Peaceful Use of Nuclear Energy signed on 18 July 1991 by the Presidents of Argentina and Brazil, which states:

> "Bearing in mind that at present no technical distinction can be made between nuclear explosive devices for peaceful purposes and those for military purposes, the parties also undertake to prohibit and prevent in their respective territories, and to abstain from carrying out, promoting or authorizing, directly or indirectly, or from participating in any way in, the testing, use, manufacture, production or acquisition by any means of any nuclear explosive device while the above-mentioned technical limitation exists."[2]

In September 1991, Argentina, Brazil and Chile adopted the Mendoza Declaration,[3] by which they confirmed a total ban on chemical weapons in their territories. Subsequently, the Declaration was adhered to by Uruguay, Paraguay, Bolivia and Ecuador. In the absence of a regime banning chemical weapons worldwide, and until the chemical weapons Convention comes into effect, commitments like the Mendoza Declaration would be a good choice for other regions of the world. Other Latin American initiatives to renounce weapons of mass destruction, such as the Cartagena Declaration,[4] adopted by the Andean countries in 1991, are also relevant. Again, as happened in the past with respect to nuclear weapons, with the Treaty of Tlatelolco, Latin America has taken the lead in prohibiting a whole category of weapons,

even before the chemical weapons Convention is opened for signature.

The above account of Brazil's stand with regard to weapons of mass destruction serves as an introduction to the presentation of my country's views with regard to the chemical weapons Convention. Article I of the Convention establishes a clear ban on chemical weapons and provides for the destruction of existing ones. The prohibition is non-discriminatory and applies to all States and to the whole category of chemical weapons. This is exactly what my Government has been requesting in the field of disarmament with respect to all weapons of mass destruction.

In the final stage of the negotiations on the chemical weapons Convention, it was argued that herbicides and riot control agents should be included in article I as chemicals the use of which would constitute a method of warfare. In our view, such chemicals did not fall into what was becoming the "traditional" definition of chemical weapons and, besides, the application of verification to the substances involved would have been extremely difficult, if not impossible. Nevertheless, we were finally convinced that the prohibition of those agents was appropriate, due to their "inhumane" effects.

Negotiations sometimes follow mysterious paths, and their results frequently seem illogical. This is precisely the case in this particular instance, where the prohibition on use of riot control agents was accepted in article I, while the prohibition regarding herbicides was only recognized in the preamble of the draft Convention, on the understanding that it would be reinforced on the occasion of the Second Review Conference of the parties to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. (The ENMOD Review Conference was held in Geneva from 14 to 18 September, after the

conclusion of the 1992 session of the Conference on Disarmament.)

Most important among the provisions of the Convention are the basic undertakings contained in article I and the provisions related to verification, to the activities not prohibited under the Convention, to challenge inspections and to economic and technological development. Since Brazil does not possess chemical weapons, many details contained in the Convention and its annexes will not have a direct bearing on my country. In fact, I would personally have preferred a simple text, clearly establishing the general obligations and setting out verification regulations, including challenge inspections, capable of providing a deterrent sufficient to guarantee compliance with the Convention. As it turned out, the present text is rather complex. It is the result of many years of negotiations, in the course of which a good number of new delegates joined in the endeavour and old ones departed from Geneva, some of whom wished to leave their personal imprint on the text. The draft was also very much influenced by the need to make it correspond to the excessively detailed provisions of the bilateral agreement on chemical weapons that the United States of America and the Russian Federation concluded.

Brazil's interest in the regulations pertaining to the activities not prohibited under the Convention is easy to understand. Even at this time of economic recession, the Brazilian chemical industry continues to be important, with production estimated at approximately $US 8 billion. Statistics vary, but Brazil lies in the range of 11th to 13th in the list of countries having the largest chemical industries. It is evident, therefore, that the regulations referred to above are important both for the Government and for Brazilian industry. In the first place, it is in the interest of the Government that the chemical companies comply with the Convention that Brazil is adhering to. This can only be

accomplished by means of clear provisions that will not allow for any ambiguity at the time they are implemented. Industry, for its part, is interested in knowing exactly what the limits are on its capacity to act as an economic agent, in terms of production and trade.

The rules pertaining to verification are therefore crucial in this regard. It was unfortunate that the negotiation and drafting of the verification regime of the Convention were not preceded by a general understanding of what characteristics and scope would be desirable in such a regime. Precious time was lost in long discussions in which two groups of delegations took opposite positions: on the one side, there was a preference for a regime capable of offering a close to one-hundred per cent guarantee that the Convention would be complied with; and, on the other, the prevailing idea was to establish cost effective verification, sufficient to provide reasonable assurance that would-be violators could be detected in a timely manner.

Not all delegations participating in this discussion had either experience in verification or a clear idea of how costly such a regime could be. Quite often, delegations advocating a non-complicated and less expensive regime were mistakenly considered to be working against verification. In this respect, recent events, namely the war in the Persian Gulf, may have somewhat clouded the picture. If, on the one hand, they were a powerful incentive to accelerate negotiations towards establishing what could be called a "zero option" in the Convention, they also prompted the search for a foolproof verification regime—something that may remain illusory. Important as verification systems may be—and we certainly agree they are—they will never be a perfect substitute for political understanding that alone can dispel the dangers of conflict.

Verification of the chemical industry, according to the Convention, is certainly as intrusive as it should be. It did not end up as strict as some would have preferred, but it still seems to be quite complex and capable of reaching all facilities relevant to the objectives of the Convention. Experience will tell whether or not changes will have to be incorporated to ensure its smooth operation and easier acceptance by the chemical industry. No one doubts that the success of the Convention and its verification regime will depend on the goodwill of the companies which may be subject to inspections. Reliance on the cooperation of those companies, especially during the first years following the establishment of the Organization for the Prohibition of Chemical Weapons (OPCW) and until the Organization can acquire the credibility it will have to enjoy in order to help Governments implement the Convention, will be of fundamental importance.

In this connection, I recall a statement by Ambassador Marcos Azambuja of Brazil, who was then Secretary-General of the Ministry of External Relations (and who had been a distinguished negotiator in the Conference on Disarmament), at the seminar held in The Hague, in May 1992, on the future OPCW:

> "If I have to sum up in one word the most important characteristic our OPCW has to present from the start, I will single out *credibility*. Credibility can be assured through an equitable geographical distribution, a fair and efficient system of verification, a reasonable cost-benefit ratio and good management."

The Convention provides the necessary tools for the OPCW to make a good start and to build upon its reputation. One of these will be the Technical Secretariat and its Inspectorate. It is my sincere hope that the States parties will be able to provide the Secretariat with qualified personnel. Another important tool is the Executive Council, which will

exercise a political role with regard to the daily activities of the Organization and supervise the activities of the Technical Secretariat. In my view, the composition of the Executive Council, as envisaged in the Convention, provides an adequate framework for the fulfilment of its functions.

The negotiators of the Convention succeeded in building a system which will make the participation of the relevant States parties in the Executive Council possible. In this sense, the participation of chemical-weapon possessors in that political body will give the international community the opportunity to put continuous pressure on the respective Governments to destroy weapons and weapons production facilities as soon as possible. The Convention does not determine, of course, the automatic participation of chemical-weapon States in the Executive Council, but there is a strong possibility that actual or potential possessors will have a seat on it.

The criterion of the importance of a party's chemical industry as an element in a State's qualifying for membership on the Council is well founded, considering that the countries having stronger chemical industries will have a larger share in the responsibility of ensuring compliance with the Convention, in controlling exports and in promoting acceptance of the verification regime. Furthermore, those will be the countries in which, in practice, OPCW inspections will be carried out relatively often, thus making them more liable to be parties to disputes relating to the implementation of the Convention. Such disputes will be avoided or resolved more easily if the States concerned are present in the Executive Council.

The challenge inspection mechanism created by the chemical weapons Convention is a most welcome innovation in disarmament agreements. Since the beginning, Brazilian negotiators have held that a simple mechanism, which could be easily triggered and automatically implemented would

suffice. At the same time we considered a much less "solemn" type of mechanism, which would be activated less by suspicion than by a desire to randomly assess the operation of the verification regime and the good faith of Governments.

In our view, such an automatic challenge inspection would make the whole verification regime much less costly and could be an efficient deterrent against non-compliance with the Convention. Suspicion, however, seems to have prevailed as the triggering device of challenge inspection. Such a device may not be capable of reducing the burdensome verification procedures of the Convention. The suspicion-operated trigger will not allow for the desired automaticity. In fact, it will make the whole mechanism more burdensome, for it will be necessary to add to the process of request/implementation the participation of the Executive Council, a purely political body.

In spite of these shortcomings, the challenge inspection mechanism is now a reality. For the first time the possibility is open that any place in the territory of a State party to the Convention can be challenged so that any doubt regarding non-compliance with the Convention can be investigated. This totally new situation in the field of disarmament is surely welcome. The precedent established by the challenge inspection mechanism can be extended to other verification regimes—a development that would certainly improve the quality of other disarmament agreements.

Article XI of the Convention, entitled "Economic and technological development", is probably the article that attracted the greatest interest on the part of the Brazilian authorities. This article regulates trade relations and transfer of technology among States parties to the Convention. For much of the period of the negotiations, the Brazilian delegates were strong supporters of this aspect whenever article XI was discussed. It was, therefore, with pride and

pleasure that my delegation accepted the task of coordinating the work related to article XI in the final stages of the negotiation in the Ad Hoc Committee on Chemical Weapons.[5]

The reason for Brazil's interest in this matter is clear. Being a "threshold country" in terms of technological and industrial development, it can develop locally, with indigenous expertise and resources, techniques and equipment in some quite advanced areas. Transfers from abroad are, however, essential in certain high-technology sectors, which could conceivably be considered as favouring non-peaceful use. A considerable effort has been expended over a number of years in contacts and negotiations between companies and governmental personnel of Brazil and other countries in order to explain the exclusively peaceful aims of Brazilian high-technology developments. As with other countries in a similar stage of development, a whole set of misunderstandings and misconceptions had accumulated over time in Brazil's relations with some of its important partners in areas of advanced technology. As discussions progressed, it became clear, for instance, that the preconceived view that Brazil was "a country of nuclear proliferation concern" was intrinsically groundless. On the other hand, on the Brazilian side, we became more accustomed to discussing high-technology-related issues without prejudging the intentions of our partners and without believing that new controls that might hamper our overall economic development would be imposed on us simply by virtue of the fact that contacts and discussions were taking place.

Difficulties were gradually but steadily overcome in many fields such as nuclear energy, to the satisfaction of Government and private sectors. Confidence-building was therefore no longer automatically equated—hopefully in the

minds of both sides—with the creation of obstacles to technological progress.

Past experience showed the desirability of seizing the opportunity of the negotiations on chemical weapons to promote a global solution for the question of transfers of material and technology of dual use in this field. In doing so we kept the following points in mind:

a Rules multilaterally agreed upon would be more appropriate than control regimes adopted unilaterally or by restricted groups;

b The operation of the Convention would provide the necessary assurances that chemical materials and technology would be used for only peaceful purposes;

c States would act in good faith when they became parties to the Convention;

d Nothing could compel Governments or companies to sell materials or technology to others if they considered that such a sale would run counter to their security interests;

e The existing control regimes would gradually disappear, as confidence in the Convention and the credibility of the OPCW increased.

These understandings made it possible for us to accept the text of article XI as finally agreed, even though it would have been more to our liking to provide for the automatic disappearance, as far as States parties are concerned, of the existing restrictions and controls in the chemical field as soon as the Convention enters into force. Our main concern is to avoid hampering trade and the technological development of the parties, and this can be safely achieved through the implementation of a credible multilateral regime.

For quite a long time no negotiations were held with regard to norms applicable to trade relations between parties and non-parties to the Convention. At the same time, discussions were intensified with the aim of incorporating a

reliable verification regime into the Convention. For the States parties, verification was becoming wider and wider in scope and, at the same time, more and more intrusive. It was then realized that some Governments might choose to stay outside the Convention because it would contain no provision that would represent a real incentive for them to join and, if they did not join, no verification provisions would apply to them. Under the coordination of Brazil and building upon a proposal made in 1991 by the delegation of the United States, a text was prepared to which the Committee finally agreed.

This formula provided, for the first time, for the multilateral establishment of a trade control regime. I would summarize it in the following words: chemicals of direct use in weapons can only be transferred to and from States parties, and only in small quantities, for research purposes; chemicals which represent a risk of being easily turned into weapons shall only be transferred among parties; during a three-year period prior to the Convention's entry into force, end-use certificates will be required by a State party from a recipient State not party to the Convention; and finally, the chemicals that are more commonly traded and do not pose a serious risk can be transferred to States not party to the Convention, provided they issue an end-use certificate. The Conference of the States parties to the Convention is to review the relevant provisions after five years of operation. In my view, the Ad Hoc Committee found an elegant solution to a complex issue that accommodates in a reasonable way legitimate security concerns as well as trade and technology concerns. In view of the constraints that States that are not parties are likely to face, such a solution will certainly serve as an incentive for universal adherence to the Convention.

Brazil is part of a comprehensive regime of non-proliferation of weapons of mass destruction. On the basis of a number of commitments, all nuclear, biological and chemical weapons are outlawed. The international

commitments entered into by Brazil are equally binding on all the foreign partners accepting the same obligation. There is no agreement in the field of disarmament accepted by Brazil that establishes different rights and obligations among its parties. This is one of the most important aspects of the chemical weapons Convention. It is our wish that the Convention will become a model for present and future agreements banning weapons of mass destruction. I can think of no other period in which there was such a strong trend in favour of the elimination of all weapons of mass destruction. Let us seize this opportunity and dispassionately work for a commitment on the part of all countries towards that goal, to be reached with the help of a strong verification regime like the one incorporated into the chemical weapons Convention.

It is certainly true that a totally new international environment created the conditions for the early conclusion of the chemical weapons Convention. Many of its provisions reflect a situation totally different from that which prevailed a few years ago. In this sense, the Convention is in harmony with the new international order we are trying to build—an order that will, hopefully, be based on transparency and mutual confidence and will not rouse the resentment that inevitably arises in relation to unbalanced agreements. The chemical weapons Convention is thus not so much the *result* of the new era as an important *precedent*, a building block that will have its own place and exert its own influence on the construction of disarmament.

Notes

1 The word "inhumane" is employed here, in accordance with common usage, to mean weapons that cause unnecessary devastation and suffering. Given his professional background and personal beliefs, the author considers all methods of warfare as intrinsically inhumane.

2 See article I, subparagraph 3, of the Agreement, which was circulated as a document of the Conference on Disarmament (CD/1117).

3 A/46/463, annex. The Declaration was reproduced in *Disarmament: A Periodic Review by the United Nations*, vol. XV, No. 1, 1992.

4 A/46/760, annex.

5 The Chairman of the Ad Hoc Committee on Chemical Weapons, Ambassador Adolf Ritter von Wagner of Germany, appointed Counsellor José Eduardo M. Felicio of the delegation of Brazil as "Friend of the Chairman" in charge of coordinating the negotiations related to the subject "economic and technological development".

The Chemical Weapons Convention: An Assesment of Future Implications

Emeka A. Azikiwe

The successful conclusion of the chemical weapons Convention by the Conference on Disarmament on 3 September 1992 represents a milestone in disarmament negotiations. It is one of the most significant steps towards the total elimination of weapons of mass destruction. There had been high expectations since last year's United Nations General Assembly resolution, which strongly urged the Conference on Disarmament, as a matter of the highest priority, to resolve all outstanding issues so as to achieve a final agreement during the 1992 session.

The sheer existence of chemical weapons provides an irresistible incentive for their use which can have grave and irreversible effects for mankind. Hence the Convention, whose objective is a universal, non-discriminatory and comprehensive regime, prohibits the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons. Apart from requiring the destruction of all existing stocks within ten years, it is the first multilateral disarmament agreement with verification provisions beyond any previous disarmament instruments.

Although the Geneva Protocol of 1925 reaffirmed the prohibition of the use of chemical weapons, its limited scope and inadequacies in confidence-building and verification

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provided a false sense of security. Besides, 40 States parties expressed reservations when ratifying the Protocol and some major nations only ratified it after 1970.

Confidence and verification are essential in any disarmament instrument. Indeed in the chemical weapons Convention, these two important elements assume an even greater dimension in ensuring the destruction of existing stockpiles and the prohibition, production and development of new ones. The General Assembly's adoption of the resolution—sponsored by 145 Member States—without a vote on 30 November is a clear indication of the broad support for the Convention.

The resolution calls on all States to sign and become parties to the Convention at the earliest possible date. It urges all States to ensure the effective implementation of the "unprecedented global, comprehensive and verifiable multilateral disarmament agreement, thereby enhancing cooperative multilateralism as a basis for international peace and security". There are still some States which express reservations, but, with time, it is hoped that effective efforts can be made to bring them on board.

The Arab Group had, in the light of the sensitive nature of circumstances prevailing in the Middle East region, felt that the chemical weapons Convention could not be dealt with in isolation from efforts related to other weapons of mass destruction—mainly the Treaty on the Non-Proliferation of Nuclear Weapons and the international system of safeguards and inspection and the provision of credible international guarantees. It is noteworthy that they consider the Convention to be a milestone on the road of the collective efforts of the international community to achieve general and complete disarmament, particularly in the field of weapons of mass destruction.

The signing ceremony scheduled in Paris barely six weeks after the adoption of the General Assembly resolution, however, demonstrates the determination of the international community to further the early realization of the objectives of the Convention.

While recognizing that the Convention is not entirely perfect, it is none the less a compromise reached after long and intensive negotiations in the Conference on Disarmament. It is pertinent to note that the "Question of chemical and biological weapons" was for the first time put on the agenda of the United Nations General Assembly in 1969. The final phase of the negotiations in the Ad Hoc Committee under the able chairmanship of Ambassador von Wagner of Germany were very delicately balanced, embodying concessions that delegations had to make in spite of their preferred positions. The result-oriented approach by the Chairman is highly commendable. It is now widely recognized that, with sufficient transparency and goodwill among States parties, the Convention should be implemented without any ambiguities, and in a manner which does not impede the legitimate activities of chemical industries, especially in the developing countries.

Despite demands from the Group of 21 and the developing countries within the Conference on Disarmament for an article on economic and technological development, detailed discussion on proposals did not start until 1987. Concerns were voiced by some delegations, notably from the developing countries, about a lack of adequate and clear provisions in the Convention concerning technological and scientific cooperation and the removal of discriminatory restrictions on chemical trade. Obviously, there are concerns that existing export control mechanisms such as those of the Australia Group should be dismantled once the Convention comes into force. The members of the Australia Group have already undertaken to review, in the light of the implementa-

tion of the Convention, the measures that they are now using to prevent the spread of chemical substances and equipment for purposes contrary to the objectives of the Convention. The aim would be to remove such restrictions for States parties to the Convention that are acting in full compliance with their obligations.

It is envisaged that the Convention will not prohibit the production, use and transfer of toxic chemicals and their precursors for industrial, agricultural, research, medical or other peaceful purposes, domestic law enforcement, military purposes not connected with the use of chemical weapons and purposes directly related to protection against chemical warfare.

Indeed, on matters of definitions and criteria, the unambiguous and all-embracing definition of toxic chemicals was examined very seriously. Key components of binary or multi-component chemical systems as well as precursors were also clearly defined. The terms "old and abandoned chemical weapons" were elaborated to include in their definitions those chemical weapons which were produced between the first and second world wars. The definition of "riot control agent" was largely resolved, although this had been unachievable as recently as 18 May 1992. Thus, "riot control agent" in the chemical weapons Convention is now defined as any chemical not listed in a schedule, which can rapidly produce in human beings sensory irritation or disabling effects which disappear within a short time following exposure.

The purposes not prohibited under the chemical weapons Convention are defined as follows:

i. Industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

ii. Protective purposes, namely, those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

iii. Military purposes not connected with the use of chemical weapons and not dependent upon the toxic properties of chemicals as a method of warfare; and

iv. Law enforcement including domestic riot control purposes.

With regard to article III concerning the declarations of States parties on their CW holdings and facilities, the main outstanding issues as negotiations ended related to the problem of the declaration of the old and abandoned chemical weapons that will need to be declared, including plans for the destruction of such weapons. With the resolution of the question of who takes responsibility for destruction in cases where chemical weapons were abandoned on the territory of another State party, it was possible to reach a conclusion. The responsibility of parties for declaring whether old chemical weapons are on their own territory or whether the party has abandoned chemical weapons on the territory of other States is now clearly reflected in the Convention.

Questions concerning the declaration of riot control agents were also resolved. Declarations for this category are to include the chemical name, structural formula and Chemical Abstract Service registry number, if assigned, for each such agent. The declaration must be updated 30 days after any change becomes effective. It is to be noted that riot control agents are only to be declared and not to be verified.

The cost of destruction of chemical weapons production facilities is ten times the cost of building such chemical weapons facilities. Since each State party takes responsibility for such destruction, the financial implication of the destruction of chemical weapons production facilities has created problems for some States. The temporary conversion of such facilities, wherever possible and cost effective, into destruction facilities was also considered. It is now possible to declare such chemical weapons production facilities as having been converted.

The verification provisions to be specified constituted a major obstacle to overcome in negotiating the chemical weapons Convention. Naturally, adequate verification is defined differently by individual States. The long delay was due to finding a delicate balance between the need for credible verification and safeguarding national interests. There was also the need to provide a balance between the rights and obligations of all States parties. This proved a formidable technical challenge, as the provisions cover not only military stockpiles, but also normal industrial plants that could produce poison gas or other chemical agents.

The verification regime requires extensive declarations, within 30 days of the Convention's entry into force, by a State party concerning possession and production facilities, and it oversees the destruction of those that are declared. Similarly, a State party must ensure that the facilities producing chemicals for permitted purposes do not exceed their allowed limit. For industrial plants, only facilities producing more than a certain specified amount of particular chemicals need to be declared. It is noteworthy that various risk levels are defined for each agent and different levels of verification are applied to each category.

The verification measures are mostly of a routine character. The inspection teams are supposed to choose the areas and specified items to be inspected in accordance with the articles and annexes. As a general guideline, the inspection teams are to be granted unimpeded access rights.

Although difficulties were encountered in all aspects of verification by the negotiators, the question of challenge inspection generated the greatest amount of controversy. This procedure calls for carrying out inspections of activities on the territory of a party in response to an allegation by another party that the activities may be inconsistent with the provisions of the Convention. The intrusiveness of the

verification in some respects places an unnecessary burden on the legitimate needs of States to protect sensitive installations in the civilian chemical industry not related to chemical weapons.

However under the managed access procedures, a State has the right to take measures to protect any sensitive activities at the site not related to chemical warfare. The Convention does not specify how decisions will be made on whether or not a particular State has violated the agreement. In addressing any concerns about non-compliance, the Executive Council is expected to request a participating State to take measures to redress such a situation within a specified time. The powers of the Executive Council to play a role in preventing misuse and abuse are less than adequate.

The signing ceremony in Paris in January 1993 will represent an ambitious global commitment to get rid of the horror or chemical warfare. The Convention includes a variety of incentives to encourage States to sign and ratify it. States that join the treaty will receive clear benefits beyond simply contributing to the global elimination of chemical weapons. In the area of trade, the Convention imposes varying degrees of restraint on chemical shipments to States that are not parties. Another incentive is the provision for assistance to States attacked or threatened with chemical weapons, including providing defensive equipment.

The next task is to ensure adequate and effective arrangements for the entry into force of the Convention. The Convention provides for the establishment of an Organization for the Prohibition of Chemical Weapons (OPCW). The task of preparing the work of this Organization is entrusted to the Preparatory Commission, to be set up in The Hague by the signatory States. Apart from the election of the Chairman, the Commission is also to establish the Provisional Technical

Secretariat and appoint an Executive Secretary, pending the the election of a Director-General.

The period between the first and second sessions of the Preparatory Commission will be critical to the successful operation of the body and its subsidiary organs. The immediate priority for the Commission will be a small number of initial and essential institution-building tasks, requiring decisions by the signatories to the Convention within three months. These tasks concern the budget, rules of procedure, a programme of work, an agreement on privileges and immunities with the host Government and the permanent facilities that will be required.

In addressing these urgent tasks, the Preparatory Commission is expected to ensure that decisions on the election of both the Chairman and Executive Secretary are reached by consensus. The Provisional Technical Secretariat should have personnel of professional competence and at the same time reflect the geographical and universal nature of the Organization. Hence, there is a need to establish, from the very beginning of the Preparatory Commission's activities, special training programmes for future inspectors.

Documentation Relating to Disarmament

General Assembly resolution 47/39 on the Chemical Weapons Convention

New York, 30 November 1992*

The General Assembly,

Recalling the long-standing determination of the international community to achieve the effective prohibition of the development, production, stockpiling and use of chemical weapons, and their destruction, as well as the continuing support for measures to uphold the authority of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,[a] as expressed by consensus in many previous resolutions,

Recalling in particular its resolution 46/35 C of 6 December 1991, in which the Assembly strongly urged the Conference on Disarmament, as a matter of the highest priority, to resolve outstanding issues so as to achieve a final agreement on a convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction during its 1992 session,

Bearing in mind the Final Declaration[b] of the Conference of States Parties to the 1925 Geneva Protocol

*Adopted without a vote.

and Other Interested States, held in Paris from 7 to 11 January 1989, in which participating States stressed their determination to prevent any recourse to chemical weapons by completely eliminating them,

Determined to make progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction,

Convinced, therefore, of the urgent necessity of a total ban on chemical weapons, so as to abolish an entire category of weapons of mass destruction, and thus eliminate the risk to mankind of renewed use of these inhumane weapons,

Welcoming the draft Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,[c] adopted by the Conference on Disarmament and contained in its report dated 3 September 1992, the result of many years of intensive negotiations, which constitutes a historic achievement in the field of arms control and disarmament,

Convinced that the Convention, particularly as adherence to it approaches universality, will contribute to the maintenance of international peace and improve the security of all States, and that it therefore merits the strong support of the entire international community,

Convinced further that the implementation of the Convention should promote expanded international trade, technological development and economic cooperation in the chemical sector, in order to enhance the economic and technological development of all States parties,

Determined to ensure the efficient and cost-effective implementation of the Convention,

Recalling the support for the prohibition of chemical weapons expressed in the declaration by representatives of the world's chemical industry at the Government-Industry

Conference against Chemical Weapons, held at Canberra from 18 to 22 September 1989,[d]

Bearing in mind the relevant references to the Convention in the Final Documents of the Tenth Conference of Heads of State or Government of Non-Aligned Countries, held at Jakarta from 1 to 6 September 1992,

Welcoming the invitation of the President of the French Republic to participate in a ceremony to sign the Convention in Paris on 13 January 1993,

1. *Commends* the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, as contained in the report of the Conference on Disarmament dated 3 September 1992;

2. *Requests* the Secretary-General, as Depositary of the Convention, to open it for signature in Paris on 13 January 1993;

3. *Calls upon* all States to sign and, thereafter, according to their respective constitutional processes, to become parties to the Convention at the earliest possible date, thus contributing to its rapid entry into force and to the early achievement of universal adherence;

4. *Further calls upon* all States to ensure the effective implementation of this unprecedented, global, comprehensive and verifiable multilateral disarmament agreement, thereby enhancing cooperative multilateralism as a basis for international peace and security;

5. *Requests* the Secretary-General to provide such services as may be requested by the signatory States to initiate the work of the Preparatory Commission for the Organization on the Prohibition of Chemical Weapons;

6. *Requests* the Secretary-General, as Depositary of the Convention, to report to the General Assembly at its forty-eighth session on the status of signatures and ratifications of the Convention.

6 a
League of Nations, *Treaty Series*, vol. XCIV (1929), No. 2138.

7 b
A/44/88, annex.

8 c
Official Records of the General Assembly, Forty-seventh Session, Supplement No. 27 (A/47/27), appendix I.

9 d
See A/C.1/44/4.

Preamble to the Chemical Weapons Convention

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control, including the prohibition and elimination of all types of weapons of mass destruction,

Desiring to contribute to the realization of the purposes and principles of the Charter of the United Nations,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925 (the Geneva Protocol of 1925),

Recognizing that this Convention reaffirms principles and objectives of and obligations assumed under the Geneva Protocol of 1925, and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction signed at London, Moscow and Washington on 10 April 1972,

Bearing in mind the objective contained in Article IX of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction,

Determined for the sake of all mankind, to exclude completely the possibility of the use of chemical weapons, through the implementation of the provisions of this Convention, thereby complementing the obligations assumed under the Geneva Protocol of 1925,

Recognizing the prohibition, embodied in the pertinent agreements and relevant principles of international law, of the use of herbicides as a method of warfare,

Considering that achievements in the field of chemistry should be used exclusively for the benefit of mankind,

Desiring to promote free trade in chemicals as well as international cooperation and exchange of scientific and technical information in the field of chemichal activities for purposes not prohibited under this Convention in order to enhance the economic and technological development of all States Parties,

Convinced that the complete and effective prohibition of the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons, and their destruction, represent a necessary step towards the achievement of these common objectives,

Have agreed as follows: